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61ST CONGRESS : : 3D SESSION

DECEMBER 5, 1910-MARCH 4, 1911

SENATE DOCUMENTS

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NORTH ATLANTIC COAST FISHERIES

PROCEEDINGS

IN THE

North Atlantic Coast Fisheries Arbitration

BEFORE

THE PERMANENT COURT OF ARBITRATION
AT THE HAGUE

UNDER THE PROVISIONS OF THE GENERAL TREATY OF ARBITRATION OF APRIL 4, 1908, AND THE SPECIAL AGREEMENT OF JANUARY 27, 1909, BETWEEN THE UNITED STATES OF AMERICA AND GREAT BRITAIN

(IN TWELVE VOLUMES)

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WASHINGTON
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1912

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NORTH ATLANTIC COAST FISHERIES

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TO THE

CASE OF THE UNITED STATES

BEFORE

THE PERMANENT COURT OF ARBITRATION
AT THE HAGUE

UNDER THE

PROVISIONS OF THE SPECIAL AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA AND GREAT BRITAIN
CONCLUDED JANUARY 27, 1909

(IN TWO PARTS)

PART I

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SECTION I

OF THE APPENDIX

OF THE

CASE OF THE UNITED STATES

TREATIES AND AGREEMENTS

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PROVISIONS RELATING TO ARBITRATION.

SPECIAL PROVISIONS.

SPECIAL AGREEMENT OF JANUARY 27, 1909, BETWEEN THE UNITED STATES AND GREAT BRITAIN.

SPECIAL AGREEMENT for the submission of questions relating to fisheries on the North Atlantic Coast under the general treaty of arbitration concluded between the United States and Great Britain on the 4th day of April, 1908.

ARTICLE I.

Whereas, by Article I of the Convention signed at London on the 20th day of October, 1818, between the United States and Great Britain, it was agreed as follows:

Whereas differences have arisen respecting the Liberty claimed by the United States for the Inhabitants thereof, to take, dry and cure Fish on Certain Coasts, Bays, Harbours and Creeks of His Britannic Majesty's Dominions in America, it is agreed between the High Contracting Parties, that the Inhabitants of the said United States shall have forever, in common with the Subjects of His Britannic Majesty, the Liberty to take Fish of every kind on that part of the Southern Coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the Western and Northern Coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the Coasts, Bays, Harbours, and Creeks from Mount Joly on the Southern Coast of Labrador, to and through the Straits of Belleisle and thence Northwardly indefinitely along the Coast, without prejudice however, to any of the exclusive Rights of the Hudson Bay Company; and that the American Fishermen shall also have liberty forever, to dry and cure Fish in any of the unsettled Bays, Harbours, and Creeks of the Southern part of the Coast of Newfoundland hereabove described, and of the Coast of Labrador; but so soon as the same, or any Portion thereof, shall be settled, it shall not be lawful for the said Fishermen to dry or cure Fish at such Portion so settled, without previous agreement for such purpose with the Inhabitants, Proprietors, or Possessors of the ground.—And the United States hereby renounce forever, any Liberty heretofore enjoyed or claimed by the Inhabitants thereof, to take, dry, or cure Fish on, or within three marine Miles of any of the Coasts, Bays, Creeks, or Harbours of His Britannic Majesty's Dominions in America not included within the above mentioned limits; provided, however, that the American Fishermen shall be admitted to enter such Bays or Harbours for the purpose of Shelter and of repairing Damages therein, of purchasing Wood, and of obtaining Water, and for no other purpose whatever. But they shall be under such Restrictions as may be necessary to prevent their taking, drying or curing Fish therein, or in any other manner whatever abusing the Privileges hereby reserved to them.

And, whereas, differences have arisen as to the scope and meaning of the said Article, and of the liberties therein referred to, and otherwise in respect of the rights and liberties which the inhabitants of

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the United States have or claim to have in the waters or on the shores therein referred to:

It is agreed that the following questions shall be submitted for decision to a tribunal of arbitration constituted as hereinafter provided:

Question 1. To what extent are the following contentions or either of them justified?

It is contended on the part of Great Britain that the exercise of the liberty to take fish referred to in the said Article, which the inhabitants of the United States have forever in common with the subjects of His Britannic Majesty, is subject, without the consent of the United States, to reasonable regulation by Great Britain, Canada, or Newfoundland in the form of municipal laws, ordinances, or rules, as, for example, to regulations in respect of (1) the hours, days, or seasons when fish may be taken on the treaty coasts; (2) the method, means, and implements to be used in the taking of fish or in the carrying on of fishing operations on such coasts; (3) any other matters of a similar character relating to fishing; such regulations being reasonable, as being, for instance—

(*a*) Appropriate or necessary for the protection and preservation of such fisheries and the exercise of the rights of British subjects therein and of the liberty which by the said Article I the inhabitants of the United States have therein in common with British subjects;

(*b*) Desirable on grounds of public order and morals;

(*c*) Equitable and fair as between local fishermen and the inhabitants of the United States exercising the said treaty liberty and not so framed as to give unfairly an advantage to the former over the latter class.

It is contended on the part of the United States that the exercise of such liberty is not subject to limitations or restraints by Great Britain, Canada, or Newfoundland in the form of municipal laws, ordinances, or regulations in respect of (1) the hours, days, or seasons when the inhabitants of the United States may take fish on the treaty coasts, or (2) the method, means, and implements used by them in taking fish or in carrying on fishing operations on such coasts, or (3) any other limitations or restraints of similar character—

(*a*) Unless they are appropriate and necessary for the protection and preservation of the common rights in such fisheries and the exercise thereof; and

(*b*) Unless they are reasonable in themselves and fair as between local fishermen and fishermen coming from the United States, and not so framed as to give an advantage to the former over the latter class; and

(*c*) Unless their appropriateness, necessity, reasonableness, and fairness be determined by the United States and Great Britain by common accord and the United States concurs in their enforcement.

Question 2. Have the inhabitants of the United States, while exercising the liberties referred to in said Article, a right to employ as members of the fishing crews of their vessels persons not inhabitants of the United States?

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Question 3. Can the exercise by the inhabitants of the United States of the liberties referred to in the said Article be subjected, without the consent of the United States, to the requirements of entry or report at custom-houses or the payment of light or harbor or other dues, or to any other similar requirement or condition or exaction?

Question 4. Under the provision of the said Article that the American fishermen shall be admitted to enter certain bays or harbors for shelter, repairs, wood, or water, and for no other purpose whatever, but that they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein or in any other manner whatever abusing the privileges thereby reserved to them, is it permissible to impose restrictions making the exercise of such privileges conditional upon the payment of light or harbor or other dues, or entering or reporting at custom-houses or any similar conditions?

Question 5. From where must be measured the "three marine miles of any of the coasts, bays, creeks, or harbors" referred to in the said Article?

Question 6. Have the inhabitants of the United States the liberty under the said Article or otherwise, to take fish in the bays, harbors, and creeks on that part of the southern coast of Newfoundland which extends from Cape Ray to Rameau Islands, or on the western and northern coasts of Newfoundland from Cape Ray to Quirpon Islands, or on the Magdalen Islands?

Question 7. Are the inhabitants of the United States whose vessels resort to the treaty coasts for the purpose of exercising the liberties referred to in Article I of the treaty of 1818 entitled to have for those vessels, when duly authorized by the United States in that behalf, the commercial privileges on the treaty coasts accorded by agreement or otherwise to United States trading vessels generally?

ARTICLE II.

Either Party may call the attention of the Tribunal to any legislative or executive act of the other Party, specified within three months of the exchange of notes enforcing this agreement, and which is claimed to be inconsistent with the true interpretation of the treaty of 1818; and may call upon the Tribunal to express in its award its opinion upon such acts, and to point out in what respects, if any, they are inconsistent with the principles laid down in the award in reply to the preceding questions; and each Party agrees to conform to such opinion.

ARTICLE III.

If any question arises in the arbitration regarding the reasonableness of any regulation or otherwise which requires an examination of the practical effect of any provisions in relation to the conditions surrounding the exercise of the liberty of fishery enjoyed by the inhabitants of the United States, or which requires expert information about the fisheries themselves, the Tribunal may, in that case, refer such question to a commission of three expert specialists in such matters; one to be designated by each of the Parties hereto, and the

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third, who shall not be a national of either Party, to be designated by the Tribunal. This Commission shall examine into and report their conclusions on any question or questions so referred to it by the Tribunal and such report shall be considered by the Tribunal and shall, if incorporated by them in the award, be accepted as a part thereof.

Pending the report of the Commission upon the question or questions so referred and without awaiting such report, the Tribunal may make a separate award upon all or any other questions before it, and such separate award, if made, shall become immediately effective, provided that the report aforesaid shall not be incorporated in the award until it has been considered by the Tribunal. The expenses of such Commission shall be borne in equal moieties by the Parties hereto.

ARTICLE IV.

The Tribunal shall recommend for the consideration of the High Contracting Parties rules and a method of procedure under which all questions which may arise in the future regarding the exercise of the liberties above referred to may be determined in accordance with the principles laid down in the award. If the High Contracting Parties shall not adopt the rules and method of procedure so recommended, or if they shall not, subsequently to the delivery of the award, agree upon such rules and methods, then any differences which may arise in the future between the High Contracting Parties relating to the interpretation of the treaty of 1818 or to the effect and application of the award of the Tribunal shall be referred informally to the Permanent Court at The Hague for decision by the summary procedure provided in Chapter IV of The Hague Convention of the 18th of October, 1907.

ARTICLE V.

The Tribunal of Arbitration provided for herein shall be chosen from the general list of members of the Permanent Court at The Hague, in accordance with the provisions of Article XLV of the Convention for the Settlement of International Disputes, concluded at the Second Peace Conference at The Hague on the 18th of October, 1907. The provisions of said Convention, so far as applicable and not inconsistent herewith, and excepting Articles LIII and LIV, shall govern the proceedings under the submission herein provided for.

The time allowed for the direct agreement of the President of the United States and His Britannic Majesty on the composition of such Tribunal shall be three months.

ARTICLE VI.

The pleadings shall be communicated in the order and within the time following:

As soon as may be and within a period not exceeding seven months from the date of the exchange of notes making this agreement binding the printed case of each of the Parties hereto, accompanied by printed copies of the documents, the official correspondence, and all other evidence on which each Party relies, shall be delivered in du-

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plicate (with such additional copies as may be agreed upon) to the agent of the other Party. It shall be sufficient for this purpose if such case is delivered at the British Embassy at Washington or at the American Embassy at London, as the case may be, for transmission to the agent for its Government.

Within fifteen days thereafter such printed case and accompanying evidence of each of the Parties shall be delivered in duplicate to each member of the Tribunal, and such delivery may be made by depositing within the stated period the necessary number of copies with the International Bureau at The Hague for transmission to the Arbitrators.

After the delivery on both sides of such printed case, either Party may, in like manner, and within four months after the expiration of the period above fixed for the delivery to the agents of the case, deliver to the agent of the other Party (with such additional copies as may be agreed upon), a printed counter-case accompanied by printed copies of additional documents, correspondence, and other evidence in reply to the case, documents, correspondence, and other evidence so presented by the other Party, and within fifteen days thereafter such Party shall, in like manner as above provided, deliver in duplicate such counter-case and accompanying evidence to each of the Arbitrators.

The foregoing provisions shall not prevent the Tribunal from permitting either Party to rely at the hearing upon documentary or other evidence which is shown to have become open to its investigation or examination or available for use too late to be submitted within the period hereinabove fixed for the delivery of copies of evidence, but in case any such evidence is to be presented, printed copies of it, as soon as possible after it is secured, must be delivered, in like manner as provided for the delivery of copies of other evidence, to each of the Arbitrators and to the agent of the other Party. The admission of any such additional evidence, however, shall be subject to such conditions as the Tribunal may impose, and the other Party shall have a reasonable opportunity to offer additional evidence in rebuttal.

The Tribunal shall take into consideration all evidence which is offered by either Party.

ARTICLE VII.

If in the case or counter-case (exclusive of the accompanying evidence) either Party shall have specified or referred to any documents, correspondence, or other evidence in its own exclusive possession without annexing a copy, such Party shall be bound, if the other Party shall demand it within thirty days after the delivery of the case or counter-case respectively, to furnish to the Party applying for it a copy thereof; and either Party may, within the like time, demand that the other shall furnish certified copies or produce for inspection the originals of any documentary evidence adduced by the Party upon whom the demand is made. It shall be the duty of the Party upon whom any such demand is made to comply with it as soon as may be, and within a period not exceeding fifteen days after the demand has been received. The production for inspection or the furnishing to the other Party of official governmental publications, publishing, as authentic, copies of the documentary evidence referred to,

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shall be a sufficient compliance with such demand, if such governmental publications shall have been published prior to the 1st day of January, 1908. If the demand is not complied with, the reasons for the failure to comply must be stated to the Tribunal.

ARTICLE VIII.

The Tribunal shall meet within six months after the expiration of the period above fixed for the delivery to the agents of the case, and upon the assembling of the Tribunal at its first session each Party, through its agent or counsel, shall deliver in duplicate to each of the Arbitrators and to the agent and counsel of the other Party (with such additional copies as may be agreed upon) a printed argument showing the points and referring to the evidence upon which it relies.

The time fixed by this Agreement for the delivery of the case, counter-case, or argument, and for the meeting of the Tribunal, may be extended by mutual consent of the Parties.

ARTICLE IX.

The decision of the Tribunal shall, if possible, be made within two months from the close of the arguments on both sides, unless on the request of the Tribunal the Parties shall agree to extend the period.

It shall be made in writing, and dated and signed by each member of the Tribunal, and shall be accompanied by a statement of reasons.

A member who may dissent from the decision may record his dissent when signing.

The language to be used throughout the proceedings shall be English.

ARTICLE X.

Each Party reserves to itself the right to demand a revision of the award. Such demand shall contain a statement of the grounds on which it is made and shall be made within five days of the promulgation of the award, and shall be heard by the Tribunal within ten days thereafter. The Party making the demand shall serve a copy of the same on the opposite Party, and both Parties shall be heard in argument by the Tribunal on said demand. The demand can only be made on the discovery of some new fact or circumstance calculated to exercise a decisive influence upon the award and which was unknown to the Tribunal and to the Party demanding the revision at the time the discussion was closed, or upon the ground that the said award does not fully and sufficiently, within the meaning of this Agreement, determine any question or questions submitted. If the Tribunal shall allow the demand for a revision, it shall afford such opportunity for further hearings and arguments as it shall deem necessary.

ARTICLE XI.

The present Agreement shall be deemed to be binding only when confirmed by the two Governments by an exchange of notes.

In witness whereof this Agreement has been signed and sealed by the Secretary of State of the United States, Elihu Root, on behalf of

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the United States, and by His Britannic Majesty's Ambassador at Washington, The Right Honorable James Bryce, O. M., on behalf of Great Britain.

Done at Washington on the 27th day of January, one thousand nine hundred and nine.

ELIHU ROOT [SEAL]
JAMES BRYCE [SEAL]

Mr. Bacon to Mr. Bryce.

No. 541.] DEPARTMENT OF STATE,
February 21, 1909.

EXCELLENCY: I have the honor to inform you that the Senate, by its resolution of the 18th instant, gave its advice and consent to the ratification of the Special Agreement between the United States and Great Britain, signed on January 27, 1909, for the submission to the Permanent Court of Arbitration at The Hague of questions relating to fisheries on the North Atlantic Coast.

In giving this advice and consent to the ratification of the Special Agreement, and as a part of the act of ratification, the Senate states in the resolution its understanding:

That it is agreed by the United States and Great Britain that question 5 of the series submitted, namely, "from where must be measured the three marine miles of any of the coasts, bays, creeks or harbors referred to in said article," does not include any question as to the Bay of Fundy, considered as a whole apart from its bays or creeks, or as to innocent passage through the Gut of Canso, and that the respective views or contentions of the United States and Great Britain on either subject shall be in no wise prejudiced by anything in the present arbitration, and that this agreement on the part of the United States will be mentioned in the ratification of the special agreement and will, in effect, form part of this special agreement.

In thus formally confirming what I stated to you orally, I have the honor to express the hope that you will in like manner formally confirm the assent of His Majesty's Government to this understanding which you heretofore stated to me orally, and that you will be prepared at an early day to exchange the notes confirming the Special Agreement as provided for therein and in the general arbitration convention of June 5, 1908.

I have the honor to be, with the highest consideration,
Your Excellency's most obedient servant,

ROBERT BACON.

His Excellency The Right Honorable JAMES BRYCE,
Etc., Etc., Etc.

Mr. Bryce to Mr. Bacon.

No. 55.] BRITISH EMBASSY,
Washington, March 4, 1909.

SIR: I have the honour to acknowledge the receipt of your note informing me that the Senate of the United States has approved the Special Agreement for the reference to arbitration of the questions relating to the fisheries on the North Atlantic Coast and of the terms of the Resolution in which that approval is given.

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It is now my duty to inform you that the Government of His Britannic Majesty confirms the Special Agreement aforesaid and in so doing confirms also the understanding arrived at by us that Question V of the series of Questions submitted for arbitration, namely from where must be measured the "three marine miles of any of the coasts, bays, creeks, or harbours" referred to in the said article, is submitted in its present form with the agreed understanding that no question as to the Bay of Fundy considered as a whole apart from its bays or creeks, or as to innocent passage through the Gut of Canso, is included in this question as one to be raised in the present arbitration, it being the intention of the Parties that their respective views or contentions on either subject shall be in no wise prejudiced by anything in the present arbitration.

This understanding is that which was embodied in notes exchanged between your predecessor and myself on January 27th, and is that expressed in the above-mentioned Resolution of the Senate of the United States.

I have the honour to be, with the highest respect, Sir,
Your most obedient, humble Servant,

JAMES BRYCE.

The Honourable, ROBERT BACON,
Etc., Etc., Etc.

Mr. Bacon to Mr. Bryce.

No. 549.] MARCH 4, 1909.

EXCELLENCY: I have the honor to acknowledge the receipt of your note of the 4th instant in which you confirm the understanding in the matter of the Special Agreement submitting to arbitration the differences between the Governments of the United States and Great Britain concerning the North Atlantic fisheries, as expressed in the Resolution of the Senate of February 18, 1909, and as previously agreed upon by the interchange of notes with my predecessor of January 27, 1909.

I therefore have the honor to inform you that this Government considers the Special Agreement as in full force and effect from and after the 4th day of March, 1909.

I have the honor to be, with the highest consideration,
Your Excellency's most obedient servant,

ROBERT BACON.

His Excellency The Right Honorable JAMES BRYCE,
Etc., Etc., Etc.

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GENERAL PROVISIONS.

TREATY OF APRIL 4, 1908, BETWEEN THE UNITED STATES AND GREAT BRITAIN.

[Ratifications exchanged, June 4, 1908.]

The President of the United States of America and His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, desiring in pursuance of the principles set forth in Articles 15–19 of the Convention for the pacific settlement of international disputes, signed at The Hague July 29, 1899, to enter into negotiations for the conclusion of an Arbitration Convention, have named as their Plenipotentiaries, to wit:

The President of the United States of America, Elihu Root, Secretary of State of the United States, and

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, The Right Honorable James Bryce, O. M., who, after having communicated to one another their full powers, found in good and due form, have agreed upon the following articles:

ARTICLE I.

Differences which may arise of a legal nature or relating to the interpretation of treaties existing between the two Contracting Parties and which it may not have been possible to settle by diplomacy, shall be referred to the Permanent Court of Arbitration established at The Hague by the Convention of the 29th of July, 1899, provided nevertheless, that they do not affect the vital interests, the independence, or the honor of the two Contracting States, and do not concern the interests of third Parties.

ARTICLE II.

In each individual case the High Contracting Parties, before appealing to the Permanent Court of Arbitration, shall conclude a special Agreement defining clearly the matter in dispute, the scope of the powers of the Arbitrators, and the periods to be fixed for the formation of the Arbitral Tribunal and the several stages of the procedure. It is understood that such special agreements on the part of the United States will be made by the President of the United States, by and with the advice and consent of the Senate thereof; His Majesty's Government reserving the right before concluding a special

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agreement in any matter affecting the interests of a self governing Dominion of the British Empire to obtain the concurrence therein of the Government of that Dominion.

Such Agreements shall be binding only when confirmed by the two Governments by an Exchange of Notes.

ARTICLE III.

The present Convention shall be ratified by the President of the United States of America by and with the advice and consent of the Senate thereof, and by his Britannic Majesty. The ratifications shall be exchanged at Washington as soon as possible, and the Convention shall take effect on the date of the exchange of its ratifications.

ARTICLE IV.

The present Convention is concluded for a period of five years, dating from the day of the exchange of its ratifications.

Done in duplicate at the City of Washington, this fourth day of April, in the year 1908.

ELIHU ROOT [SEAL]
JAMES BRYCE [SEAL]

HAGUE CONVENTION OF OCTOBER 18, 1907, FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES.

[Extract.]

PART IV.—*International Arbitration.*

CHAPTER I.—*The System of Arbitration.*

ARTICLE XXXVII.

International arbitration has for its object the settlement of disputes between States by Judges of their own choice and on the basis of respect for law.

Recourse to arbitration implies an engagement to submit in good faith to the Award.

ARTICLE XXXVIII.

In questions of a legal nature, and especially in the interpretation or application of International Conventions, arbitration is recognized by the Contracting Powers as the most effective, and, at the same time, the most equitable means of settling disputes which diplomacy has failed to settle.

Consequently, it would be desirable that, in disputes about the above-mentioned questions, the Contracting Powers should, if the case arose, have recourse to arbitration, in so far as circumstances permit.

ARTICLE XXXIX.

The Arbitration Convention is concluded for questions already existing or for questions which may arise eventually.

It may embrace any dispute or only disputes of a certain category.

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ARTICLE XL.

Independently of general or private Treaties expressly stipulating recourse to arbitration as obligatory on the Contracting Powers, the said Powers reserve to themselves the right of concluding new Agreements, general or particular, with a view to extending compulsory arbitration to all cases which they may consider it possible to submit to it.

CHAPTER II.—*The Permanent Court of Arbitration.*

ARTICLE XLI.

With the object of facilitating an immediate recourse to arbitration for international differences, which it has not been possible to settle by diplomacy, the Contracting Powers undertake to maintain the Permanent Court of Arbitration, as established by the First Peace Conference, accessible at all times, and operating, unless otherwise stipulated by the parties, in accordance with the rules of procedure inserted in the present Convention.

ARTICLE XLII.

The Permanent Court is competent for all arbitration cases, unless the parties agree to institute a special Tribunal.

ARTICLE XLIII.

The Permanent Court sits at The Hague.

An International Bureau serves as registry for the Court. It is the channel for communications relative to the meetings of the Court; it has charge of the archives and conducts all the administrative business.

The Contracting Powers undertake to communicate to the Bureau, as soon as possible, a certified copy of any conditions of arbitration arrived at between them and of any Award concerning them delivered by a special Tribunal.

They likewise undertake to communicate to the Bureau the laws, regulations, and documents eventually showing the execution of the Awards given by the Court.

ARTICLE XLIV.

Each Contracting Power selects four persons at the most, of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of Arbitrator.

The persons thus selected are inscribed, as members of the Court, in a list which shall be notified to all the Contracting Powers by the Bureau.

Any alteration in the list of Arbitrators is brought by the Bureau to the knowledge of the Contracting Powers.

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Two or more Powers may agree on the selection in common of one or more members.

The same person can be selected by different Powers. The members of the Court are appointed for a term of six years. These appointments are renewable.

Should a member of the Court die or resign, the same procedure is followed for filling the vacancy as was followed for appointing him. In this case the appointment is made for a fresh period of six years.

ARTICLE XLV.

When the Contracting Powers wish to have recourse to the Permanent Court for the settlement of a difference which has arisen between them, the Arbitrators called upon to form the Tribunal with jurisdiction to decide this difference must be chosen from the general list of members of the Court.

Failing the direct agreement of the parties on the composition of the Arbitration Tribunal, the following course shall be pursued:—

Each party appoints two Arbitrators, of whom one only can be its national or chosen from among the persons selected by it as members of the Permanent Court. These Arbitrators together choose an Umpire.

If the votes are equally divided, the choice of the Umpire is intrusted to a third Power, selected by the parties by common accord.

If an agreement is not arrived at on this subject each party selects a different Power, and the choice of the Umpire is made in concert by the Powers thus selected.

If, within two months' time, these two Powers cannot come to an agreement, each of them presents two candidates taken from the list of members of the Permanent Court, exclusive of the members selected by the parties and not being nationals of either of them. Drawing lots determines which of the candidates thus presented shall be Umpire.

ARTICLE XLVI.

The Tribunal being thus composed, the parties notify to the Bureau their determination to have recourse to the Court, the text of their "Compromis,"[a] and the names of the Arbitrators.

The Bureau communicates without delay to each Arbitrator the "Compromis," and the names of the other members of the Tribunal.

The Tribunal assembles at the date fixed by the parties. The Bureau makes the necessary arrangements for the meeting.

The members of the Tribunal, in the exercise of their duties and out of their own country, enjoy diplomatic privileges and immunities.

ARTICLE XLVII.

The Bureau is authorized to place its offices and staff at the disposal of the Contracting Powers for the use of any special Board of Arbitration.

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[a] The preliminary Agreement in an international arbitration defining the point at issue and arranging the procedure to be followed.

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The jurisdiction of the Permanent Court may, within the conditions laid down in the regulations, be extended to disputes between non-Contracting Powers or between Contracting Powers and non-Contracting Powers, if the parties are agreed on recourse to this Tribunal.

Article XLVIII.

The Contracting Powers consider it their duty, if a serious dispute threatens to break out between two or more of them, to remind these latter that the Permanent Court is open to them.

Consequently, they declare that the fact of reminding the parties at variance of the provisions of the present Convention, and the advice given to them, in the highest interests of peace, to have recourse to the Permanent Court, can only be regarded as friendly actions.

In case of dispute between two Powers, one of them can always address to the International Bureau a note containing a declaration that it would be ready to submit the dispute to arbitration.

The Bureau must at once inform the other Power of the declaration.

Article XLIX.

The Permanent Administrative Council, composed of the Diplomatic Representatives of the Contracting Powers accredited to The Hague and of the Netherland Minister for Foreign Affairs, who will act as President, is charged with the direction and control of the International Bureau.

The Council settles its rules of procedure and all other necessary regulations.

It decides all questions of administration which may arise with regard to the operations of the Court.

It has entire control over the appointment, suspension, or dismissal of the officials and employés of the Bureau.

It fixes the payments and salaries, and controls the general expenditure.

At meetings duly summoned the presence of nine members is sufficient to render valid the discussions of the Council. The decisions are taken by a majority of votes.

The Council communicates to the Contracting Powers without delay the regulations adopted by it. It furnishes them with an annual Report on the labours of the Court, the working of the administration, and the expenditure. The Report likewise contains a résumé of what is important in the documents communicated to the Bureau by the Powers in virtue of Article XLIII, paragraphs 3 and 4.

Article L.

The expenses of the Bureau shall be borne by the Contracting Powers in the proportion fixed for the International Bureau of the Universal Postal Union.

The expenses to be charged to the adhering Powers shall be reckoned from the date on which their adhesion comes into force.

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CHAPTER III.—*Arbitration Procedure.*

ARTICLE LI.

With a view to encouraging the development of arbitration, the Contracting Powers have agreed on the following rules, which are applicable to arbitration procedure, unless other rules have been agreed on by the parties.

ARTICLE LII.

The Powers which have recourse to arbitration sign a "Compromis," in which the subject of the dispute is clearly defined, the time allowed for appointing Arbitrators, the form, order, and time in which the communication referred to in Article LXIII must be made, and the amount of the sum which each party must deposit in advance to defray the expenses.

The "Compromis" likewise defines, if there is occasion, the manner of appointing Arbitrators, any special powers which may eventually belong to the Tribunal, where it shall meet, the language it shall use, and the languages the employment of which shall be authorized before it, and, generally speaking, all the conditions on which the parties are agreed.

ARTICLE LIII.

The Permanent Court is competent to settle the "Compromis," if the parties are agreed to have recourse to it for the purpose.

It is similarly competent, even if the request is only made by one of the parties, when all attempts to reach an understanding through the diplomatic channel have failed, in the case of:—

1. A dispute covered by a general Treaty of Arbitration concluded or renewed after the present Convention has come into force, and providing for a "Compromis" in all disputes and not either explicitly or implicitly excluding the settlement of the "Compromis" from the competence of the Court. Recourse cannot, however, be had to the Court if the other party declares that in its opinion the dispute does not belong to the category of disputes which can be submitted to compulsory arbitration, unless the Treaty of Arbitration confers upon the Arbitration Tribunal the power of deciding this preliminary question.

2. A dispute arising from contract debts claimed from one Power by another Power as due to its nationals, and for the settlement of which the offer of arbitration has been accepted. This arrangement is not applicable if acceptance is subject to the condition that the "Compromis" should be settled in some other way.

ARTICLE LIV.

In the cases contemplated in the preceding Article, the "Compromis" shall be settled by a Commission consisting of five members selected in the manner arranged for in Article XLV, paragraphs 3 to 6.

The fifth member is President of the Commission *ex officio*.

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ARTICLE LV.

The duties of Arbitrator may be conferred on one Arbitrator alone or on several Arbitrators selected by the parties as they please, or chosen by them from the members of the Permanent Court of Arbitration established by the present Convention.

Failing the constitution of the Tribunal by direct agreement between the parties, the course referred to in Article XLV, paragraphs 3 to 6, is followed.

ARTICLE LVI.

When a Sovereign or the Chief of a State is chosen as Arbitrator, the arbitration procedure is settled by him.

ARTICLE LVII.

The Umpire is President of the Tribunal *ex officio*.

When the Tribunal does not include an Umpire, it appoints its own President.

ARTICLE LVIII.

When the "Compromis" is settled by a Commission, as contemplated in Article LIV, and in the absence of an agreement to the contrary, the Commission itself shall form the Arbitration Tribunal.

ARTICLE LIX.

Should one of the Arbitrators either die, retire, or be unable for any reason whatever to discharge his functions, the same procedure is followed for filling the vacancy as was followed for appointing him.

ARTICLE LX.

The Tribunal sits at The Hague, unless some other place is selected by the parties.

The Tribunal can only sit in the territory of a third Power with the latter's consent.

The place of meeting once fixed cannot be altered by the Tribunal, except with the consent of the parties.

ARTICLE LXI.

If the question as to what languages are to be used has not been settled by the "Compromis," it shall be decided by the Tribunal.

ARTICLE LXII.

The parties are entitled to appoint special agents to attend the Tribunal to act as intermediaries between themselves and the Tribunal.

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They are further authorized to retain for the defence of their rights and interests before the Tribunal counsel or advocates appointed by themselves for this purpose.

The members of the Permanent Court may not act as agents, counsel, or advocates except on behalf of the Power which appointed them members of the Court.

Article LXIII.

As a general rule, arbitration procedure comprises two distinct phases: pleadings and oral discussions.

The pleadings consist in the communication by the respective agents to the members of the Tribunal and the opposite party of cases, counter-cases, and, if necessary, of replies; the parties annex thereto all papers and documents called for in the case. This communication shall be made either directly or through the intermediary of the International Bureau, in the order and within the time fixed by the "Compromis."

The time fixed by the "Compromis" may be extended by mutual agreement by the parties, or by the Tribunal when the latter considers it necessary for the purpose of reaching a just decision.

The discussions consist in the oral development before the Tribunal of the arguments of the parties.

Article LXIV.

A certified copy of every document produced by one party must be communicated to the other party.

Article LXV.

Unless special circumstances arise, the Tribunal does not meet until the pleadings are closed.

Article LXVI.

The discussions are under the control of the President.

They are only public if it be so decided by the Tribunal, with the assent of the parties.

They are recorded in minutes drawn up by the Secretaries appointed by the President. These minutes are signed by the President and by one of the Secretaries and alone have an authentic character.

Article LXVII.

After the close of the pleadings, the Tribunal is entitled to refuse discussion of all new papers or documents which one of the parties may wish to submit to it without the consent of the other party.

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ARTICLE LXVIII.

The Tribunal is free to take into consideration new papers or documents to which its attention may be drawn by the agents or counsel of the parties.

In this case, the Tribunal has the right to require the production of these papers or documents, but is obliged to make them known to the opposite party.

ARTICLE LXIX.

The Tribunal can, besides, require from the agents of the parties the production of all papers, and can demand all necessary explanations. In case of refusal the Tribunal takes note of it.

ARTICLE LXX.

The agents and the counsel of the parties are authorized to present orally to the Tribunal all the arguments they may consider expedient in defence of their case.

ARTICLE LXXI.

They are entitled to raise objections and points. The decisions of the Tribunal on these points are final and cannot form the subject of any subsequent discussion.

ARTICLE LXXII.

The members of the Tribunal are entitled to put questions to the agents and counsel of the parties, and to ask them for explanations on doubtful points.

Neither the questions put, nor the remarks made by members of the Tribunal in the course of the discussions, can be regarded as an expression of opinion by the Tribunal in general or by its members in particular.

ARTICLE LXXIII.

The Tribunal is authorized to declare its competence in interpreting the "Compromis," as well as the other Treaties which may be invoked, and in applying the principles of law.

ARTICLE LXXIV.

The Tribunal is entitled to issue rules of procedure for the conduct of the case, to decide the forms, order, and time in which each party must conclude its arguments, and to arrange all the formalities required for dealing with the evidence.

ARTICLE LXXV.

The parties undertake to supply the Tribunal, as fully as they consider possible, with all the information required for deciding the case.

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ARTICLE LXXVI.

For all notices which the Tribunal has to serve in the territory of a third Contracting Power, the Tribunal shall apply direct to the Government of that Power. The same rule applies in the case of steps being taken to procure evidence on the spot.

The requests for this purpose are to be executed as far as the means at the disposal of the Power applied to under its municipal law allow. They cannot be rejected unless the Power in question considers them calculated to impair its own sovereign rights or its safety.

The Court will equally be always entitled to act through the Power on whose territory it sits.

ARTICLE LXXVII.

When the agents and counsel of the parties have submitted all the explanations and evidence in support of their case the President shall declare the discussion closed.

ARTICLE LXXVIII.

The Tribunal considers its decisions in private and the proceedings remain secret.

All questions are decided by a majority of the members of the Tribunal.

ARTICLE LXXIX.

The Award must give the reasons on which it is based. It contains the names of the Arbitrators; it is signed by the President and Registrar or by the Secretary acting as Registrar.

ARTICLE LXXX.

The Award is read out in public sitting, the agents and counsel of the parties being present or duly summoned to attend.

ARTICLE LXXXI.

The Award, duly pronounced and notified to the agents of the parties, settles the dispute definitively and without appeal.

ARTICLE LXXXII.

Any dispute arising between the parties as to the interpretation and execution of the Award shall, in the absence of an Agreement to the contrary, be submitted to the Tribunal which pronounced it.

ARTICLE LXXXIII.

The parties can reserve in the "Compromis" the right to demand the revision of the Award.

In this case and unless there be an Agreement to the contrary, the demand must be addressed to the Tribunal which pronounced the

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Award. It can only be made on the ground of the discovery of some new fact calculated to exercise a decisive influence upon the Award and which was unknown to the Tribunal and to the party which demanded the revision at the time the discussion was closed.

Proceedings for revision can only be instituted by a decision of the Tribunal expressly recording the existence of the new fact, recognizing in it the character described in the preceding paragraph, and declaring the demand admissible on this ground.

The "Compromis" fixes the period within which the demand for revision must be made.

Article LXXXIV.

The Award is not binding except on the parties in dispute.

When it concerns the interpretation of a Convention to which Powers other than those in dispute are parties, they shall inform all the Signatory Powers in good time. Each of these Powers is entitled to intervene in the case. If one or more avail themselves of this right, the interpretation contained in the Award is equally binding on them.

Article LXXXV.

Each party pays its own expenses and an equal share of the expenses of the Tribunal.

Chapter IV.—*Arbitration by Summary Procedure.*

Article LXXXVI.

With a view to facilitating the working of the system of arbitration in disputes admitting of a summary procedure, the Contracting Powers adopt the following rules, which shall be observed in the absence of other arrangements and subject to the reservation that the provisions of Chapter III apply so far as may be.

Article LXXXVII.

Each of the parties in dispute appoints an Arbitrator. The two Arbitrators thus selected choose an Umpire. If they do not agree on this point, each of them proposes two candidates taken from the general list of the members of the Permanent Court exclusive of the members appointed by either of the parties and not being nationals of either of them; which of the candidates thus proposed shall be the Umpire is determined by lot.

The Umpire presides over the Tribunal, which gives its decisions by a majority of votes.

Article LXXXVIII.

In the absence of any previous agreement the Tribunal, as soon as it is formed, settles the time within which the two parties must submit their respective cases to it.

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ARTICLE LXXXIX.

Each party is represented before the Tribunal by an agent, who serves as intermediary between the Tribunal and the Government who appointed him.

ARTICLE XC.

The proceedings are conducted exclusively in writing. Each party, however, is entitled to ask that witnesses and experts should be called. The Tribunal has, for its part, the right to demand oral explanations from the agents of the two parties, as well as from the experts and witnesses whose appearance in Court it may consider useful.

* * * * * * *

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PROVISIONS RELATING TO FISHERIES

BETWEEN THE UNITED STATES AND GREAT BRITAIN.

TREATY OF SEPTEMBER 3, 1783.

In the name of the Most Holy and Undivided Trinity.

It having pleased the Divine Providence to dispose the hearts of the most serene and most potent Prince George the Third, by the Grace of God King of Great Britain, France and Ireland, Defender of the Faith, Duke of Brunswick and Luneburg, Arch-Treasurer and Prince Elector of the Holy Roman Empire, &ca., and of the United States of American, to forget all past misunderstandings and differences that have unhappily interrupted the good correspondence and friendship which they mutually wish to restore; and to establish such a beneficial and satisfactory intercourse between the two countries, upon the ground of reciprocal advantages and mutual conveniences, as may promote and secure to both perpetual peace and harmony: And having for this desirable end already laid the foundation of peace and reconciliation, by the provisional articles, signed at Paris, on the 30th of Nov'r, 1782 by the commissioners empowered on each part, which articles were agreed to be inserted in and to constitute the treaty of peace proposed to be concluded between the Crown of Great Britain and the said United States, but which treaty was not to be concluded until terms of peace should be agreed upon between Great Britain and France, and His Britannic Majesty should be ready to conclude such treaty accordingly; and the treaty between Great Britain and France having since been concluded, His Britannic Majesty and the United States of America, in order to carry into full effect the provisional articles above mentioned, according to the tenor thereof, have constituted and appointed, that is to say, His Britannic Majesty on his part, David Hartley, esqr., member of the Parliament of Great Britain; and the said United States on their part, John Adams, esqr., late a commissioner of the United States of America at the Court of Versailles late Delegate in Congress from the State of Massachusetts, and chief justice of the said State, and Minister Plenipotentiary of the said United States to their High Mightinesses the States General of the United Netherlands; Benjamin Franklin, esq're, late Delegate in Congress from the State of Pennsylvania, president of the convention of the said State, and Minister Plenipotentiary from the United States of America at the Court of Versailles; John Jay, esq're, late president of Congress, and chief justice of the State of New York, and Minister Plenipotentiary from the said United States at the Court of Madrid, to be the Plenipotentiaries for the concluding and signing the present definitive treaty; who, after having reciprocally communicated their respective full powers, have agreed upon and confirmed the following articles:

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ARTICLE I.

His Britannic Majesty acknowledges the said United States, viz, New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, to be free sovereign and independent States; that he treats with them as such, and for himself, his heirs and successors, relinquishes all claims to the Government, propriety and territorial rights of the same, and every part thereof.

* * * * * * *

ARTICLE III.

It is agreed that the people of the United States shall continue to enjoy unmolested the right to take fish of every kind on the Grand Bank, and on all the other banks of Newfoundland; also in the Gulph of Saint Lawrence, and at all other places in the sea where the inhabitants of both countries used at any time heretofore to fish. And also that the inhabitants of the United States shall have liberty to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use (but not to dry or cure the same on that island) and also on the coasts, bays and creeks of all other of His Britannic Majesty's dominions in America; and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbours and creeks of Nova Scotia, Magdalen Islands, and Labrador, so long as the same shall remain unsettled; but so soon as the same or either of them shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlements, without a previous agreement for that purpose with the inhabitants, proprietors or possessors of the ground.

* * * * * * *

Done at Paris, this third day of September, in the year of our Lord one thousand seven hundred and eighty-three.

D. HARTLEY. [L. S.]
JOHN ADAMS. [L. S.]
B. FRANKLIN. [L. S.]
JOHN JAY. [L. S.]

[NOTE: The above article is identical with Article III of the provisional articles above referred to, concluded November 30, 1782.]

TREATY OF OCTOBER 20, 1818.

[Ratifications exchanged, January 30, 1819.]

The United States of America, and His Majesty the King of the United Kingdom of Great Britain and Ireland, desirous to cement the good understanding which happily subsists between them, have, for that purpose, named their respective Plenipotentiaries, that is to say:

The President of the United States, on his part, has appointed Albert Gallatin, their Envoy Extraordinary and Minister Plenipotentiary to the Court of France; and Richard Rush, their Envoy Extraordinary and Minister Plenipotentiary to the Court of His Britannic Majesty:—and His Majesty has appointed the Right Honorable Frederick John Robinson, Treasurer of His Majesty's Navy, and

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President of the Committee of Privy Council for Trade and Plantations; and Henry Goulburn, Esq., one of His Majesty's Under Secretarys of State:—

Who, after having exchanged their respective full powers, found to be in due and proper form, have agreed to and concluded the following articles.

ARTICLE I.

Whereas differences have arisen respecting the Liberty claimed by the United States for the inhabitants thereof, to take, dry and cure Fish on Certain Coasts, Bays, Harbours, and Creeks of His Britannic Majesty's Dominions in America, it is agreed between the High Contracting Parties, that the Inhabitants of the said United States shall have forever, in common with the Subjects of His Britannic Majesty, the Liberty to take Fish of every kind on that part of the Southern Coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the Western and Northern Coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the Coasts, Bays, Harbours and Creeks from Mount Joly on the Southern Coast of Labrador, to and through the Streights of Belleisle and thence Northwardly indefinitely along the Coast, without prejudice however, to any of the exclusive Rights of the Hudson Bay Company: And that the American fishermen shall also have liberty forever, to dry and cure Fish in any of the unsettled Bays, Harbours, and Creeks of the Southern part of the Coast of Newfoundland hereabove described, and of the Coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said Fishermen to dry or cure Fish at such Portion so settled, without previous agreement for such purpose with the Inhabitants, Proprietors, or Possessors of the ground. And the United States hereby renounce forever, any Liberty, heretofore enjoyed or claimed by the Inhabitants thereof, to take, dry or cure Fish on, or within three marine Miles of any of the Coasts, Bays, Creeks, or Harbours of His Britannic Majesty's Dominions in America not included within the abovementioned limits; Provided however, that the American Fishermen shall be admitted to enter such Bays or Harbours for the purpose of Shelter and of repairing Damages therein, of purchasing Wood, and of obtaining Water, and for no other purpose whatever. But they shall be under such Restrictions as may be necessary to prevent their taking, drying or curing Fish therein, or in any other manner whatever abusing the Privileges hereby reserved to them.

* * * * * * *

Done at London this twentieth day of October, in the year of our Lord one thousand eight hundred and eighteen.

ALBERT GALLATIN.	[L. S.]
RICHARD RUSH.	[L. S.]
FREDERICK JOHN ROBINSON.	[L. S.]
HENRY GOULBURN.	[L. S.]

TREATY OF JUNE 5, 1854.

[Ratifications exchanged, September 9, 1854.]

The Government of the United States being equally desirous with Her Majesty the Queen of Great Britain to avoid further misunderstanding between their respective citizens and subjects in regard to

the extent of the right of fishing on the coasts of British North America, secured to each by article I of a convention between the United States and Great Britain signed at London on the 20th day of October, 1818; and being also desirous to regulate the commerce and navigation between their respective territories and people, and more especially between Her Majesty's possessions in North America and the United States, in such manner as to render the same reciprocally beneficial and satisfactory, have, respectively, named Plenipotentiaries to confer and agree thereupon, that is to say:

The President of the United States of America, William L. Marcy, Secretary of State of the United States, and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, James, Earl of Elgin and Kincardine, Lord Bruce and Elgin, a peer of the United Kingdom, Knight of the most ancient and most noble Order of the Thistle, and Governor General in and over all Her Britannic Majesty's provinces on the continent of North America, and in and over the island of Prince Edward:

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon the following articles:

ARTICLE I.

It is agreed by the high contracting parties that in addition to the liberty secured to the United States fishermen by the above-mentioned convention of October 20, 1818, of taking, curing, and drying fish on certain coasts of the British North American Colonies therein defined, the inhabitants of the United States shall have, in common with the subjects of Her Britannic Majesty, the liberty to take fish of every kind, except shell-fish, on the sea coasts and shores and in the bays, harbors and creeks of Canada, New Brunswick, Nova Scotia, Prince Edward's Island, and of the several islands thereunto adjacent, without being restricted to any distance from the shore, with permission to land upon the coasts and shores of those colonies and the islands thereof, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish; provided that, in so doing, they do not interfere with the rights of private property, or with British fishermen, in the peaceable use of any part of the said coast in their occupancy for the same purpose.

It is understood that the above-mentioned liberty applies solely to the sea fishery, and that the salmon and shad fisheries, and all fisheries in rivers and the mouths of rivers, are hereby reserved exclusively for British fishermen.

And it is further agreed that, in order to prevent or settle any disputes as to the places to which the reservation of exclusive right to British fishermen contained in this article, and that of fishermen of the United States contained in the next succeeding article, apply, each of the high contracting parties, on the application of either to the other, shall, within six months thereafter, appoint a Commissioner. The said Commissioners, before proceeding to any business, shall make and subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment, and according to justice and equity, without fear, favor, or affection to their own country, upon all such places as are intended to be reserved and excluded from the common liberty of fishing under this

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and the next succeeding article; and such declaration shall be entered on the record of their proceedings.

The Commissioners shall name some third person to act as an Arbitrator or Umpire in any case or cases on which they may themselves differ in opinion. If they should not be able to agree upon the name of such third person, they shall each name a person, and it shall be determined by lot which of the two persons so named shall be the Arbitrator or Umpire in cases of difference or disagreement between the Commissioners. The person so to be chosen to be Arbitrator or Umpire shall, before proceeding to act as such in any case, make and subscribe a solemn declaration in a form similar to that which shall already have been made and subscribed by the Commissioners, which shall be entered on the record of their proceedings. In the event of the death, absence, or incapacity of either of the Commissioners, or of the Arbitrator or Umpire, or of their or his omitting, declining or ceasing to act as such Commissioner, Arbitrator, or Umpire, another and different person shall be appointed or named as aforesaid to act as such Commissioner, Arbitrator, or Umpire, in the place and stead of the person so originally appointed or named as aforesaid, and shall make and subscribe such declaration as aforesaid.

Such Commissioners shall proceed to examine the coasts of the North American provinces and of the United States, embraced within the provisions of the first and second articles of this treaty, and shall designate the places reserved by the said articles from the common right of fishing therein.

The decision of the Commissioners, and of the Arbitrator or Umpire shall be given in writing in each case, and shall be signed by them respectively.

The high contracting parties hereby solemnly engage to consider the decision of the Commissioners, conjointly, or of the Arbitrator or Umpire, as the case may be, as absolutely final and conclusive in each case decided upon by them or him respectively.

Article II.

It is agreed by the high contracting parties that British subjects shall have, in common with the citizens of the United States the liberty to take fish of every kind, except shell fish, on the eastern sea-coasts and shores of the United States north of the 36th parallel of north latitude, and on the shores of the several islands thereunto adjacent, and in the bays, harbors, and creeks of the said sea-coast and shores of the United States and of the said islands, without being restricted to any distance from the shore, with permission to land upon the said coasts of the United States and of the islands aforesaid, for the purpose of drying their nets and curing their fish: Provided, that, in so doing, they do not interfere with the rights of private property, or with the fishermen of the United States, in the peaceable use of any part of the said coasts in their occupancy for the same purpose.

It is understood that the above-mentioned liberty applies solely to the sea fishery, and that salmon and shad fisheries, and all fisheries in rivers and mouths of rivers, are hereby reserved exclusively for fishermen of the United States.

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ARTICLE V.

The present treaty shall take effect as soon as the laws required to carry it into operation shall have been passed by the Imperial Parliament of Great Britain and by the Provincial Parliaments of those of the British North American colonies which are affected by this treaty on the one hand, and by the Congress of the United States on the other. Such assent having been given, the treaty shall remain in force for ten years from the date at which it may come into operation, and further until the expiration of twelve months after either of the high contracting parties shall give notice to the other of its wish to terminate the same; each of the high contracting parties being at liberty to give such notice to the other at the end of the said term of ten years, or at any time afterwards.

It is clearly understood, however, that this stipulation is not intended to affect the reservation made by Article IV of the present treaty, with regard to the right of temporarily suspending the operations of Articles III and IV thereof.

ARTICLE VI.

And it is hereby further agreed that the provisions and stipulations of the foregoing articles shall extend to the island of Newfoundland, so far as they are applicable to that colony. But if the Imperial Parliament, the Provincial Parliament of Newfoundland, or the Congress of the United States shall not embrace in their laws, enacted for carrying this treaty into effect, the colony of Newfoundland, then this article shall be of no effect; but the omission to make provision by law to give it effect, by either of the legislative bodies aforesaid, shall not in any way impair the remaining articles of this treaty.

* * * * * * *

Done in triplicate, at Washington, the fifth day of June, anno Domini one thousand eight hundred and fifty-four.

W. L. MARCY. [L. S.]
ELGIN & KINCARDINE. [L. S.]

[NOTE.—This treaty was put into effect by President's proclamations of March 16 and Dec. 12, 1855; British Act of Feb. 19, 1855 (18 & 19 Vict. cap. 3), and Newfoundland Act of July 7, 1855 (18 & 19 Vict. cap. 2). It was terminated by notice from the United States on March 17, 1866. (Joint Resolution, 32d Congress, 2nd Session, approved January 18, 1865. See For. Rel. 1865, Part I, p. 93.) The Commission authorized by Article I to designate the places reserved from the common right of fishing met in August 1855 and ceased to exist by the termination of the treaty. Nearly all the work had been accomplished when the Commission dissolved. (Treaties in Force, 1904, p. 328.)]

TREATY OF MAY 8, 1871.

[Ratifications exchanged, June 17, 1871.]

The United States of America and Her Britannic Majesty, being desirous to provide for an amicable settlement of all causes of difference between the two countries, have for that purpose appointed

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their respective Plenipotentiaries, that is to say: the President of the United States, has appointed on the part of the United States as Commissioners in a Joint High Commission and Plenipotentiaries, Hamilton Fish, Secretary of State; Robert Cumming Schenck, Envoy Extraordinary and Minister Plenipotentiary to Great Britain; Samuel Nelson, an Associate Justice of the Supreme Court of the United States; Ebenezer Rockwood Hoar, of Massachusetts; and George Henry Williams, of Oregon; and Her Britannic Majesty on her part has appointed as her High Commissioners, and Plenipotentiaries the Right Honourable George Frederick Samuel, Earl de Grey and Earl of Ripon, Viscount Goderich, Baron Brantham, a Baronet, a Peer of the United Kingdom, Lord President of Her Majesty's Most Honourable Privy Council, Knight of the Most Noble Order of the Garter, etc etc; the Right Honourable Sir Stafford Henry Northcote, Baronet, one of Her Majesty's Most Honourable Privy Council, a Member of Parliament, a Companion of the Most Honourable Order of the Bath, etc etc; Sir Edward Thornton, Knight Commander of the Most Honourable Order of the Bath, Her Majesty's Envoy Extraordinary and Minister Plenipotentiary to the United States of America; Sir John Alexander Macdonald, Knight Commander of the Most Honourable Order of the Bath, a Member of Her Majesty's Privy Council for Canada, and Minister of Justice and Attorney General of Her Majesty's Dominion of Canada; and Mountague Bernard, Esquire, Chichele Professor of International Law in the University of Oxford.

And the said Plenipotentiaries, after having exchanged their full powers, which were found to be in due and proper form, have agreed to and concluded the following Articles:

* * * * * * *

Article XVIII.

It is agreed by the High Contracting Parties that, in addition to the liberty secured to the United States fishermen by the Convention between the United States and Great Britain, signed at London on the 20th day of October, 1818, of taking, curing, and drying fish on certain coasts of the British North American Colonies therein defined, the inhabitants of the United States shall have, in common with the subjects of Her Britannic Majesty, the liberty, for the term of years mentioned in Article XXXIII of this Treaty, to take fish of every kind, except shell-fish, on the sea-coasts and shores, and in the bays, harbours, and creeks, of the Provinces of Quebec, Nova Scotia, and New Brunswick, and the Colony of Prince Edward's Island, and of the several islands thereunto adjacent, without being restricted to any distance from the shore, with permission to land upon the said coasts and shores and islands, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish; provided that, in so doing, they do not interfere with the rights of private property, or with British fishermen, in the peaceable use of any part of the said coasts in their occupancy for the same purpose.

It is understood that the above-mentioned liberty applies solely to the sea fishery, and that the salmon and shad fisheries, and all other fisheries in rivers and the mouths of rivers, are hereby reserved exclusively for British fishermen.

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Article XIX.

It is agreed by the High Contracting Parties that British subjects shall have, in common with the citizens of the United States, the liberty, for the term of years mentioned in Article XXXIII of this Treaty, to take fish of every kind, except shell-fish, on the eastern sea-coasts and shores of the United States north of the thirty-ninth parallel of north latitude, and on the shores of the several islands thereunto adjacent, and in the bays, harbours, and creeks of the said sea-coasts and shores of the United States and of the said islands, without being restricted to any distance from the shore, with permission to land upon the said coasts of the United States and of the islands aforesaid, for the purpose of drying their nets and curing their fish; provided that, in so doing, they do not interfere with the rights of private property, or with the fishermen of the United States in the peaceable use of any part of the said coasts in their occupancy for the same purpose.

It is understood that the above-mentioned liberty applies solely to the sea fishery, and that salmon and shad fisheries, and all other fisheries in rivers and mouths of rivers, are hereby reserved exclusively for fishermen of the United States.

Article XX.

It is agreed that the places designated by the Commissioners appointed under the first Article of the Treaty between the United States and Great Britain, concluded at Washington on the 5th of June, 1854, upon the coasts of Her Britannic Majesty's Dominions and the United States, as places reserved from the common right of fishing under that Treaty, shall be regarded as in like manner reserved from the common right of fishing under the preceding Articles. In case any question should arise between the Governments of the United States and of Her Britannic Majesty as to the common right of fishing in places not thus designated as reserved, it is agreed that a Commission shall be appointed to designate such places, and shall be constituted in the same manner, and have the same powers, duties, and authority as the Commission appointed under the said first Article of the Treaty of the 5th of June, 1854.

Article XXI.

It is agreed that, for the term of years mentioned in Article XXXIII of this Treaty, fish oil and fish of all kinds, (except fish of the inland lakes, and of the rivers falling into them, and except fish preserved in oil,) being the produce of the fisheries of the United States, or of the Dominion of Canada, or of Prince Edward's Island, shall be admitted into each country, respectively, free of duty.

Article XXII.

Inasmuch as it is asserted by the Government of Her Britannic Majesty that the privileges accorded to the citizens of the United States under Article XVIII. of this Treaty are of greater value than those accorded by Articles XIX. and XXI. of this Treaty to the sub-

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jects of Her Britannic Majesty, and this assertion is not admitted by the Government of the United States, it is further agreed that Commissioners shall be appointed to determine, having regard to the privileges accorded by the United States to the subjects of Her Britannic Majesty, as stated in Articles XIX. and XXI. of this Treaty, the amount of any compensation which, in their opinion, ought to be paid by the Government of the United States to the Government of Her Britannic Majesty in return for the privileges accorded to the citizens of the United States under Article XVIII. of this Treaty; and that any sum of money which the said Commissioners may so award shall be paid by the United States Government, in a gross sum, within twelve months after such award shall have been given.

Article XXIII.

The Commissioners referred to in the preceding Article shall be appointed in the following manner, that is to say: One Commissioner shall be named by the President of the United States, one by Her Britannic Majesty, and a third by the President of the United States and Her Britannic Majesty conjointly; and in case the third Commissioner shall not have been so named within a period of three months from the date when this article shall take effect, then the third Commissioner shall be named by the Representative at London of His Majesty the Emperor of Austria and King of Hungary. In case of the death, absence, or incapacity of any Commissioner, or in the event of any Commissioner omitting or ceasing to act, the vacancy shall be filled in the manner hereinbefore provided for making the original appointment, the period of three months in case of such substitution being calculated from the date of the happening of the vacancy.

The Commissioners so named shall meet in the City of Halifax, in the Province of Nova Scotia, at the earliest convenient period after they have been respectively named, and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide the matters referred to them to the best of their judgment, and according to justice and equity; and such declaration shall be entered on the record of their proceedings.

Each of the High Contracting Parties shall also name one person to attend the Commission as its agent, to represent it generally in all matters connected with the Commission.

Article XXIV.

The proceedings shall be conducted in such order as the Commissioners appointed under Articles XXII and XXIII of this Treaty shall determine. They shall be bound to receive such oral or written testimony as either Government may present. If either Party shall offer oral testimony, the other Party shall have the right of cross-examination, under such rules as the Commissioners shall prescribe.

If in the case submitted to the Commissioners either Party shall have specified or alluded to any report or document in its own exclusive possession, without annexing a copy, such Party shall be

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bound, if the other Party thinks proper to apply for it, to furnish that Party with a copy thereof; and either Party may call upon the other, through the Commissioners, to produce the originals or certified copies of any papers adduced as evidence, giving in each instance such reasonable notice as the Commissioners may require.

The case on either side shall be closed within a period of six months from the date of the organization of the Commission, and the Commissioners shall be requested to give their award as soon as possible thereafter. The aforesaid period of six months may be extended for three months in case of a vacancy occurring among the Commissioners under the circumstances contemplated in Article XXIII of this Treaty.

ARTICLE XXV.

The Commissioners shall keep an accurate record and correct minutes or notes of all their proceedings, with the dates thereof, and may appoint and employ a secretary and any other necessary officer or officers to assist them in the transaction of the business which may come before them.

Each of the High Contracting Parties shall pay its own Commissioner and agent or counsel; all other expenses shall be defrayed by the two Governments in equal moieties.

* * * * * * *

ARTICLE XXXII.

It is further agreed that the provisions and stipulations of Articles XVIII to XXV of this Treaty, inclusive, shall extend to the Colony of Newfoundland, so far as they are applicable. But if the Imperial Parliament, the Legislature of Newfoundland, or the Congress of the United States, shall not embrace the Colony of Newfoundland in their laws enacted for carrying the foregoing Articles into effect, then this Article shall be of no effect; but the omission to make provision by law to give it effect, by either of the legislative bodies aforesaid, shall not in any way impair any other Articles of this Treaty.

ARTICLE XXXIII.

The foregoing Articles XVIII to XXV, inclusive, and Article XXX of this Treaty, shall take effect as soon as the laws required to carry them into operation shall have been passed by the Imperial Parliament of Great Britain, by the Parliament of Canada, and by the Legislature of Prince Edward's Island on the one hand, and by the Congress of the United States on the other. Such assent having been given, the said Articles shall remain in force for the period of ten years from the date at which they may come into operation; and further until the expiration of two years after either of the High Contracting Parties shall have given notice to the other of its wish to terminate the same; each of the High Contracting Parties being at liberty to give such notice to the other at the end of the said period of ten years or at any time afterward.

* * * * * * *

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Done in duplicate at Washington the eighth day of May, in the year of our Lord one thousand eight hundred and seventy-one.

[L. S.]	HAMILTON FISH.
[L. S.]	ROBT. C. SCHENCK.
[L. S.]	SAMUEL NELSON.
[L. S.]	EBENEZER ROCKWOOD HOAR.
[L. S.]	GEO. H. WILLIAMS.
[L. S.]	DE GREY & RIPON.
[L. S.]	STAFFORD H. NORTHCOTE.
[L. S.]	EDWD. THORNTON.
[L. S.]	JOHN A. MACDONALD.
[L. S.]	MONTAGUE BERNARD.

[NOTE.—These Articles were put into effect by President's proclamations of July 1, 1873, and May 29, 1874; British Act of August 6, 1872 (35 & 36 Vict., cap. 45) and Newfoundland Act of March 28, 1874 (37 Vict., cap. 2). They were terminated July 1, 1885, by notice from the United States pursuant to Joint Resolution of Congress of March 3, 1883. (President Arthur's proclamation of January 31, 1885.)]

MODUS VIVENDI OF 1885.

Notice of Secretary Bayard.

By direction of the President, the undersigned, Secretary of State, hereby makes known to all whom it may concern that a temporary diplomatic agreement has been entered into between the Government of the United States and the Government of Her Britannic Majesty in relation to the fishing privileges which were granted by the fishery clauses of the treaty between the United States and Great Britain of May 8, 1871, whereby the privilege of fishing, which would otherwise have terminated with the treaty clauses on the 1st of July proximo, may continue to be enjoyed by the citizens and subjects of the two countries engaged in fishing operations throughout the season of 1885.

This agreement proceeds from the mutual good-will of the two Governments, and has been reached solely to avoid all misunderstanding and difficulties which might otherwise arise from the abrupt termination of the fishing of 1885 in the midst of the season. The immunity which is accorded by this agreement to the vessels belonging to citizens of the United States engaged in fishing in the British American waters will likewise be extended to British vessels and subjects engaged in fishing in the waters of the United States.

The joint resolution of Congress of March 3, 1883, providing for the termination of the fishing articles of the treaty of May 8, 1871, having repealed in terms the act of March 1, 1873, for the execution of the fishing articles, and that repeal being express and absolute from the date of the termination of the said fishing articles, under due notification given and proclaimed by the President of the United States, to wit, July 1, 1885, the present temporary agreement in no way affects the question of statutory enactment or exemption from customs duties, as to which the abrogation of the fishing articles remains complete.

As part of this agreement, the President will bring the whole question of the fisheries before Congress at its next session in December,

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and recommend the appointment of a joint commission by the Governments of the United States and Great Britain to consider the matter, in the interest of maintaining good neighborhood and friendly intercourse between the two countries, thus affording a prospect of negotiation for the development and extension of trade between the United States and British North America.

Copies of the memoranda and exchanged notes on which this temporary agreement rests are appended.

Reference is also made to the President's proclamation of January 31, 1885, terminating the fishing articles of the treaty of Washington.

By direction of the President:

T. F. BAYARD,
Secretary of State.

Memorandum of Mr. West.

The fishery clauses of the treaty of Washington of 1871 will expire on the 1st of July next. It has been represented by the Canadian Government that much inconvenience is likely to arise in consequence, unless some agreement can be made for an extension of the period.

When the time comes (1st of July next) American ships will be actually engaged in fishing within the territorial waters of the Dominion. These vessels will have been fitted out for the season's fishing and have made all their usual arrangements for following it up until its termination in the autumn. If, under these circumstances, the provincial or municipal authorities in Canada were to insist upon their strict rights, and to compel such vessels, on pain of seizure, to desist from fishing, considerable hardship would be occasioned to the owners, and a feeling of bitterness engendered on both sides which it is clearly the interest of both Governments to avert.

It seems therefore desirable, in order to avoid such possible complications, that both Governments should come to an agreement under which the clauses might be in effect extended until the 1st of January, 1886.

If this were done the existing state of things would come to an end at a date between the fishery season of 1885 and that of 1886, and an abrupt transition at a moment when fishery operations were bing carried on would be thus avoided.

WASHINGTON, *March 12, 1885.*

Mr. Bayard to Mr. West.

DEPARTMENT OF STATE,
Washington, April 22, 1885.

DEAR MR. WEST: I have on several occasions lately, in conversation, acquainted you with my interest in the fisheries memorandum which accompanied your personal letter of March 12.

Several informal talks I have had with Sir Ambrose Shea have enabled me to formulate the views of this Government upon the proposition made in behalf of the Dominion and the Province of Newfoundland, and I take pleasure in handing you herewith a memorandum embodying the results. If this suits, I shall be happy to confirm the arrangement by an exchange of notes at your early convenience.

I am, &c.,

T. F. BAYARD.

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MEMORANDUM.

The legislation passed by the Congress of the United States, act of March 1, 1873, for the execution of the fishery articles of the treaty of Washington, has been repealed by the joint resolution of March 3, 1883, the repeal to take effect July 1, 1885. From that date the effects of the fisheries articles of the treaty of Washington absolutely determine, so far as their execution within the jurisdiction of the United States is concerned, and without new legislation by Congress modifying or postponing that repeal the Executive is not constitutionally competent to extend the reciprocal fisheries provisions of the treaty beyond the 1st of July next, the date fixed by the action of Congress.

Mr. West's memorandum of March 12, 1885, suggests the mutual practical convenience that would accrue from allowing the fishing ventures commenced prior to July 1, 1885, to continue until the end of the season for fishing of that year, thus preventing their abrupt termination in the midst of fishing operations on the 1st of July.

It has been, moreover, suggested on the part of the Province of Newfoundland and of the Dominion of Canada, that in view of the mutual benefit and convenience of the present local traffic, consisting of the purchase of ice, bait, wood, and general ship supplies by the citizens of the United States engaged in fishing from the inhabitants of the British American fishing coast, the usual operations of the fishing season of 1885 should be continued by the fishing vessels belonging to citizens of the United States until the end of the season of that year, and that the local authorities of Newfoundland and of the Dominion of Canada, in a spirit of amity and good neighborhood, should abstain from molesting such fishermen or impeding their progress or their local traffic with the inhabitants incidental to fishing during the remainder of the season of 1885, and all this with the understanding that the President of the United States would bring the whole question of the fisheries before Congress at its next session in December, and recommend the appointment of a commission in which the Governments of the United States and of Great Britain should be respectively represented, which commission should be charged with the consideration and settlement, upon a just, equitable, and honorable basis, of the entire question of the fishing rights of the two Governments and their respective citizens on the coast of the United States and British North America.

The President of the United States would be prepared to recommend the adoption of such action by Congress with the understanding that in view and in consideration of such promised recommendation there would be no enforcement of restrictive and penal laws and regulations by the authorities of the Dominion of Canada or of the Province of Newfoundland, against the fishermen of the United States resorting to British American waters between the 1st of July next and the close of the present year's fishing season; the mutual object and intent being to avoid any annoyance to the individuals engaged in this business and traffic, and the invitation or ill-feeling that might be engendered by a harsh or vexatious enforcement of stringent local regulations on the fishing coast pending an effort to have a just and amicable arrangement of an important and somewhat delicate question between the two nations.

Public knowledge of this understanding and arrangement can be given by an exchange of notes between Mr. West and myself, which can be given to the press.

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Memorandum of Mr. West.

(Received June 13, 1885.)

It is proposed to state in notes according temporary arrangement respecting fisheries that an agreement has been arrived at under circumstances affording prospect of negotiation for development and extension of trade between the United States and British North America.

The government of Newfoundland do not make refunding of duties a condition of their acceptance of the proposed agreement, but they rely on it having due consideration before the international commission which may be appointed.

Mr. Bayard to Mr. West.

DEPARTMENT OF STATE,
Washington, June 19, 1885.

MY DEAR MR. WEST: I assume that the two memoranda you handed to me on the 13th instant embrace the acceptance by the Dominion and the British American coast provinces of the general features of my memorandum of April 21, concerning a temporary arrangement respecting the fisheries, with the understanding expressed on their side that the "agreement has been arrived at under circumstances affording prospect of negotiation for development and extension of trade between the United States and British North America."

To such a contingent understanding I can have no objection. Indeed, I regard it as covered by the statement in my memorandum of May 21, that the arrangement therein contemplated would be reached "with the understanding that the President of the United States would bring the whole question of the fisheries before Congress at its next session in December, and recommend the appointment of a commission in which the Governments of the United States and Great Britain should be respectively represented, which commission should be charged with the consideration and settlement, upon a just, equitable, and honorable basis, of the entire question of the fishing rights of the two Governments and their respective citizens on the coasts of the United States and British North America."

The equities of the question being before such a mixed commission would doubtless have the fullest latitude of expression and treatment on both sides; and the purpose in view being the maintenance of good neighborhood and intercourse between the two countries, the recommendation of any measures which the commission might deem necessary to attain those ends would seem to fall within its province, and such recommendations could not fail to receive attentive consideration.

I am not, therefore, prepared to state limits to the proposals to be brought forward in the suggested commission on behalf of either party.

I believe this statement will be satisfactory to you, and I should be pleased to be informed at the earliest day practicable of your acceptance of the understanding on behalf of British North America; and by this simple exchange of notes and memoranda the agreement will

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be completed in season to enable the President to make the result publicly known to the citizens engaged in the fishing on the British American Atlantic coast.

I have, &c.,

T. F. BAYARD.

Mr. West to Mr. Bayard.

BRITISH LEGATION,
Washington, June 20, 1885.

MY DEAR MR. BAYARD: I beg to acknowledge the receipt of your note of yesterday's date, concerning the proposed temporary arrangement respecting the fisheries, which I am authorized by Her Majesty's Government to negotiate with you on behalf of the Government of the Dominion of Canada and the government of Newfoundland, to be effected by an exchange of notes founded on your memorandum of the 21st of April last.

The two memoranda which I handed to you on the 13th instant contain, as you assume, the acceptance by the Dominion and the British American coast provinces of the general features of your above-mentioned memorandum, with the understanding expressed on their side that the agreement has been arrived at under circumstances affording prospects of negotiation for the development and extension of trade between the United States and British North America, a contingent understanding to which, as you state, you can have no objection, as you regard it as covered by the terms of your memorandum of April 21.

In authorizing me to negotiate this agreement, Earl Granville states, as I have already had occasion to intimate to you, that it is on the distinct understanding that it is a temporary one, and that its conclusion must not be held to prejudice any claim which may be advanced to more satisfactory equivalents by the colonial governments in the course of the negotiation for a more permanent settlement. Earl Granville further wishes me to tell you that Her Majesty's Government and the colonial governments have consented to the arrangement, solely as a mark of good will to the Government and people of the United States, and to avoid difficulties which might be raised by the termination of the fishery articles in the midst of a fishing season; and also that the acceptance of such a *modus vivendi* does not, by any implication, affect the value of the inshore fisheries by the Governments of Canada and Newfoundland. I had occasion to remark to you that while the colonial governments are asked to guarantee immunity from interference to American vessels resorting to Canadian waters, no such immunity is offered in your memorandum to Canadian vessels resorting to American waters, but that the Dominion Government presumed that the agreement in this respect would be mutual. As you accepted this view, it would, I think, be as well that mention should be made to this effect in the notes.

Under the reservations, as above indicated, in which I believe you acquiesce, I am prepared to accept the understanding on behalf of British North America, and to exchange notes in the above sense.

I have, &c.,

L. S. SACKVILLE-WEST.

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Mr. Bayard to Mr. West.

DEPARTMENT OF STATE,
Washington, June 20, 1885.

SIR: I have just received your note of to-day's date in regard to the proposed temporary arrangement touching the fisheries.

Undoubtedly it is our clear and mutual understanding that the arrangement now made is only temporary, and that it proceeds from the mutual good-will of our respective Governments, and solely to avoid all difficulties which might otherwise arise from the termination of the fishing of 1885 in the midst of the season.

I understand, also, that the same immunity which is accorded by this agreement to the vessels belonging to the citizens of the United States, engaged in fishing in the British American waters, will be extended to British vessels and subjects engaged in fishing in the waters of the United States. Perceiving, therefore, no substantial difference between our respective propositions and these statements as contained in our correspondence on the subject, I shall consider the agreement as embodied in our memoranda and the correspondence between us as thus concluded; and public notification to that effect will be given in a few days by the President.

I have, &c.,

T. F. BAYARD.

Mr. Bayard to Mr. West.

DEPARTMENT OF STATE,
Washington, June 22, 1885.

SIR: In compliance with your verbal request of this morning that I should restate part of my note to you of the 19th, I repeat that the arrangement whereby a *modus vivendi* on the fishing question has been reached, rests on the memoranda and correspondence exchanged; that your memorandum of the 13th instant expressed the understanding on your side that the "agreement has been arrived at under circumstances affording prospect of negotiation for development and extension of trade between the United States and British North America;" that I not only had no objection to such an understanding, but, in fact regarded it as amply embraced in our proposal to recommend a commission to deal with the whole subject in the interest of good neighborhood and intercourse, and that the recommendation of any measures which the commission might deem necessary to attain those ends would seem to fall within its province, and such recommendations could not fail to have attentive consideration.

Having thus not only admitted the proviso of your memorandum in your own language, but gone still further and pointed out that no limits would be set, so far as I was concerned, to the proposals to be brought forward in the suggested commission on behalf of either party, I do not see how it is possible for me to give any stronger assurance that the understanding has "been reached under circumstances affording a prospect of negotiation for the development and extension of trade between the United States and British America."

I have, &c.,

T. F. BAYARD.

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Mr. West to Mr. Bayard.

WASHINGTON, *June 22, 1885.*

SIR: I have the honor to acknowledge the receipt of your notes of the 20th and 22d instant in regard to the proposed temporary arrangement touching the fisheries, in which you state that it is our clear and mutual understanding that such arrangement is only temporary, and that it proceeds from the mutual good-will of our respective Governments, and solely to avoid all difficulties which might otherwise arise from the termination of the fishing of 1885 in the midst of the season. Also that the same immunity which is accorded by this agreement to the vessels belonging to the citizens of the United States engaged in fishing in the British American waters will be extended to British vessels and subjects engaged in fishing in the waters of the United States, and that the agreement has been reached under circumstances affording a prospect of negotiation for the development and extension of trade between the United States and British North America.

As therefore there exists no substantial difference between our respective propositions and the statements as contained in our correspondence on the subject, I shall consider the agreement as embodied in our memoranda and the correspondence between us as thus concluded, and shall inform Her Majesty's Government and the Governments of the Dominion of Canada and Newfoundland accordingly.

I have, &c.,

L. S. SACKVILLE WEST.

PROPOSED TREATY OF FEBRUARY 15, 1888.

Whereas differences have arisen concerning the interpretation of Article I. of the Convention of October 20, 1818; the United States of America, and her Majesty the Queen of the United Kingdom of Great Britain and Ireland, being mutually desirous of removing all causes of misunderstanding in relation thereto, and of promoting friendly intercourse and good neighborhood between the United States and the Possessions of Her Majesty in North America, have resolved to conclude a Treaty to that end, and have named as their Plenipotentiaries, that is to say:

The President of the United States, Thomas F. Bayard, Secretary of State; William L. Putnam, of Maine; and James B. Angell, of Michigan:

And Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, The Right Hon. Joseph Chamberlain, M. P., The Honorable Sir Lionel Sackville Sackville West, K. C. M. G., Her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary to the United States of America; and Sir Charles Tupper, G. C. M. G., C. B., Minister of Finance of the Dominion of Canada;

Who, having communicated to each other their respective Full Powers, found in good and due form, have agreed upon the following articles:

ARTICLE I.

The High Contracting Parties agree to appoint a Mixed Commission to delimit, in the manner provided in this Treaty, the British waters, bays, creeks, and harbors, of the coasts of Canada and of

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Newfoundland, as to which the United States, by Article I. of the convention of October 20, 1818, between the United States and Great Britain, renounced forever any liberty to take, dry, or cure fish.

ARTICLE II.

The Commission shall consist of two Commissioners to be named by Her Britannic Majesty, and of two Commissioners to be named by the President of the United States, without delay, after the exchange of ratifications of this Treaty.

The Commission shall meet and complete the delimitation as soon as possible thereafter.

In case of the death, absence, or incapacity of any Commissioner, or in the event of any Commissioner omitting or ceasing to act as such, the President of the United States, or Her Britannic Majesty, respectively, shall forthwith name another person to act as Commissioner instead of the Commissioner originally named.

ARTICLE III.

The delimitation referred to in Article I. of this Treaty shall be marked upon British Admiralty charts by a series of lines regularly numbered and duly described. The charts so marked shall, on the termination of the work of the Commission, be signed by the Commissioners in quadruplicate, one copy whereof shall be delivered to the Secretary of State of the United States, and three copies to Her Majesty's Government. The delimitation shall be made in the following manner, and shall be accepted by both the High Contracting Parties as applicable for all purposes under Article I. of the Convention of October 20, 1818, between the United States and Great Britain.

The three marine miles mentioned in Article I. of the Convention of October 20, 1818, shall be measured seaward from low water mark; but at every bay, creek, or harbor, not otherwise specially provided for in this treaty, such three marine miles shall be measured seaward from a straight line drawn across the bay, creek, or harbor, in the part nearest the entrance at the first point where the width does not exceed ten marine miles.

ARTICLE IV.

At or near the following bays the limits of exclusion under Article I. of the Convention of October 20, 1818, at points more than three marine miles from low water mark, shall be established by the following lines, namely:

At the Baie des Chaleurs the line from the Light at Birch Point on Miscou Island to Macquereau Point Light; at the Bay of Miramichi, the line from the light at Point Escuminac to the Light on the Eastern Point of Tabisintac Gully; at Egmont Bay, in Prince Edward Island, the line from the Light at Cape Egmont to the Light at West Point; and off St. Ann's Bay, in the Province of Nova Scotia, the line from Cape Smoke to the Light at Point Aconi.

At Fortune Bay, in Newfoundland, the line from Connaigre Head to the Light on the South-easterly end of Brunet Island, thence to Fortune Head; at Sir Charles Hamilton Sound, the line from the South-east point of Cape Fogo to White Island, thence to the North end of Peckford Island, and from the South end of Peckford Island to the East Headland of Ragged Harbor.

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At or near the following bays the limits of exclusion shall be three marine miles seaward from the following lines, namely:

At or near Barrington Bay, in Nova Scotia, the line from the Light on Stoddard Island to the Light on the south point of Cape Sable, thence to the Light at Baccaro Point; at Chedabucto and St. Peter's Bays, the line from Cranberry Island Light to Green Island Light, thence to Point Rouge; at Mira Bay, the line from the Light on the East Point of Scatari Island to the North-easterly Point of Cape Morien; and at Placentia Bay, in Newfoundland, the line from Latine Point, on the Eastern mainland shore, to the most Southerly Point of Red Island, thence by the most Southerly Point of Merasheen Island to the mainland.

Long Island and Bryer Island, at St. Mary's Bay, in Nova Scotia, shall, for the purpose of delimitation, be taken as the coasts of such bay.

ARTICLE V.

Nothing in this Treaty shall be construed to include within the common waters any such interior portions of any bays, creeks, or harbors as can not be reached from the sea without passing within the three marine miles mentioned in Article I of the Convention of October 20, 1818.

ARTICLE VI.

The Commissioners shall from time to time report to each of the High Contracting Parties, such lines as they may have agreed upon, numbered, described, and marked as herein provided, with quadruplicate charts thereof; which lines so reported shall forthwith from time to time be simultaneously proclaimed by the High Contracting Parties, and be binding after two months from such proclamation.

ARTICLE VII.

Any disagreement of the Commissioners shall forthwith be referred to an Umpire selected by the Secretary of State of the United States and Her Britannic Majesty's Minister at Washington; and his decision shall be final.

ARTICLE VIII.

Each of the High Contracting Parties shall pay its own Commissioners and officers. All other expenses jointly incurred, in connection with the performance of the work, including compensation to the Umpire, shall be paid by the High Contracting Parties in equal moieties.

ARTICLE IX.

Nothing in this Treaty shall interrupt or affect the free navigation of the Strait of Canso by fishing vessels of the United States.

ARTICLE X.

United States fishing vessels entering the bays or harbors referred to in Article I. of this Treaty shall conform to harbor regulations common to them and to fishing vessels of Canada or of Newfoundland.

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They need not report, enter, or clear, when putting into such bays or harbors for shelter or repairing damages, nor when putting into the same, outside the limits of established ports of entry, for the purpose of purchasing wood or of obtaining water; except that any such vessel remaining more than twenty-four hours, exclusive of Sundays and legal holidays, within any such port, or communicating with the shore therein, may be required to report, enter, or clear; and no vessel shall be excused hereby from giving due information to boarding officers.

They shall not be liable in any such bays or harbors for compulsory pilotage; nor, when therein for the purpose of shelter, of repairing damages, of purchasing wood, or of obtaining water, shall they be liable for harbor dues, tonnage dues, buoy dues, light dues, or other similar dues; but this enumeration shall not permit other charges inconsistent with the enjoyment of the liberties reserved or secured by the Convention of October 20, 1818.

Article XI.

United States fishing vessels entering the ports, bays, and harbors of the Eastern and Northeastern coasts of Canada or of the coasts of Newfoundland under stress of weather or other casualty may unload, reload, tranship, or sell, subject to customs laws and regulations, all fish on board, when such unloading, transshipment, or sale is made necessary as incidental to repairs, and may replenish outfits, provisions and supplies damaged or lost by disaster; and in case of death or sickness shall be allowed all needful facilities, including the shipping of crews.

Licenses to purchase in established ports of entry of the aforesaid coasts of Canada or of Newfoundland, for the homeward voyage, such provisions and supplies as are ordinarily sold to trading vessels, shall be granted to United States fishing vessels in such ports promptly upon application and without charge; and such vessels having obtained licenses in the manner aforesaid, shall also be accorded upon all occasions such facilities for the purchase of casual or needful provisions and supplies as are ordinarily granted to trading vessels; but such provisions or supplies shall not be obtained by barter, nor purchased for re-sale or traffic.

Article XII.

Fishing vessels of Canada and Newfoundland shall have on the Atlantic coast of the United States all the privileges reserved and secured by this Treaty to United States fishing vessels in the aforesaid waters of Canada and Newfoundland.

Article XIII.

The Secretary of the Treasury of the United States shall make regulations providing for the conspicuous exhibition by every United States fishing vessel, of its official number on each bow; and any such vessel, required by law to have an official number, and failing to comply with such regulations, shall not be entitled to the licenses provided for in this Treaty.

Such regulations shall be communicated to Her Majesty's Government previously to their taking effect.

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ARTICLE XIV.

The penalties for unlawfully fishing in the waters, bays, creeks, and harbors, referred to in Article I of this Treaty, may extend to forfeiture of the boat or vessel, and appurtenances, and also of the supplies and cargo aboard when the offense was committed; and for preparing in such waters to unlawfully fish therein, penalties shall be fixed by the court, not to exceed those for unlawfully fishing; and for any other violation of the laws of Great Britain, Canada, or Newfoundland relating to the right of fishery in such waters, bays, creeks, or harbors, penalties shall be fixed by the court, not exceeding in all three dollars for every ton of the boat or vessel concerned. The boat or vessel may be holden for such penalties and forfeitures.

The proceedings shall be summary and as inexpensive as practicable. The trial (except on appeal) shall be at the place of detention, unless the judge shall, on request of the defense, order it to be held at some other place adjudged by him more convenient. Security for costs shall not be required of the defense, except when bail is offered. Reasonable bail shall be accepted. There shall be proper appeals available to the defense only; and the evidence at the trial may be used on appeal.

Judgments of forfeiture shall be reviewed by the Governor-General of Canada in Council, or the Governor in Council of Newfoundland, before the same are executed.

ARTICLE XV.

Whenever the United States shall remove the duty from fish-oil, whale-oil, seal-oil, and fish of all kinds (except fish preserved in oil), being the produce of fisheries carried on by the fishermen of Canada and Newfoundland, including Labrador, as well as from the usual and necessary casks, barrels, kegs, cans, and other usual and necessary coverings containing the products above mentioned, the like products, being the produce of fisheries carried on by the fishermen of the United States, as well as the usual and necessary coverings of the same, as above described, shall be admitted free of duty into the Dominion of Canada and Newfoundland.

And upon such removal of duties, and while the aforesaid articles are allowed to be brought into the United States by British subjects, without duty being reimposed thereon, the privilege of entering the ports, bays, and harbors of the aforesaid coasts of Canada and Newfoundland shall be accorded to the United States fishing vessels by annual licenses, free of charge, for the following purposes, namely:

1. The purchase of provisions, bait, ice, seines, lines, and all other supplies and outfits;

2. Transshipment of catch, for transport by any means of conveyance;

3. Shipping of crews.

Supplies shall not be obtained by barter, but bait may be so obtained.

The like privileges shall be continued or given to fishing vessels of Canada and of Newfoundland on the Atlantic coasts of the United States.

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ARTICLE XVI.

This treaty shall be ratified by the President of the United States, by and with the advice and consent of the Senate; and by Her Britannic Majesty, having received the assent of the Parliament of Canada and of the Legislature of Newfoundland; and the ratifications shall be exchanged at Washington as soon as possible.

In faith whereof, We, the respective plenipotentiaries, have signed this Treaty, and have hereunto affixed our seals.

Done in duplicate, at Washington, this fifteenth day of February, in the year of our Lord one thousand eight hundred and eighty-eight.

T. F. BAYARD. [SEAL.]
WILLIAM L. PUTNAM. [SEAL.]
JAMES B. ANGELL. [SEAL.]
J. CHAMBERLAIN. [SEAL.]
L. S. SACKVILLE WEST. [SEAL.]
CHARLES TUPPER. [SEAL.]

[NOTE.—This treaty was never consented to by the United States Senate.]

PROTOCOL OF FEBRUARY 15, 1888, ESTABLISHING A MODUS VIVENDI PENDING THE RATIFICATION OF THE TREATY OF THAT DATE.

The treaty having been signed the British Plenipotentiaries desire to state that they have been considering the position which will be created by the immediate commencement of the fishing season before the Treaty can possibly be ratified by the Senate of the United States, by the Parliament of Canada, and the Legislature of Newfoundland.

In the absence of such ratification the old conditions which have given rise to so much friction and irritation might be revived, and might interfere with the unprejudiced consideration of the Treaty by the legislative bodies concerned.

Under these circumstances, and with the further object of affording evidence of their anxious desire to promote good feeling and to remove all possible subjects of controversy, the British Plenipotentiaries are ready to make the following temporary arrangement for a period not exceeding two years, in order to afford a "modus vivendi" pending the ratification of the Treaty.

1. For a period not exceeding two years from the present date, the privilege of entering the bays and harbors of the Atlantic coasts of Canada and Newfoundland shall be granted to United States fishing vessels by annual Licenses at a fee of $1½ per ton—for the following purposes:

The purchase of bait, ice, seines, lines and all other supplies and outfits.

Transshipment of catch and shipping of crews.

2. If during the continuance of this arrangement, the United States should remove the duties on fish, fish oil, whale and seal oil (and their coverings, packages, &c.), the said Licenses shall be issued free of charge.

3. United States fishing vessels entering the bays and harbors of the Atlantic coasts of Canada or of Newfoundland for any of the four purposes mentioned in Article I. of the Convention of October 20, 1818, and not remaining therein more than twenty-four hours,

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shall not be required to enter or clear at the custom house, providing that they do not communicate with the shore.

4. Forfeiture to be exacted only for the offences of fishing or preparing to fish in territorial waters.

5. This arrangement to take effect as soon as the necessary measures can be completed by the Colonial Authorities.

J. CHAMBERLAIN.
L. S. SACKVILLE WEST.
CHARLES TUPPER.

MODUS VIVENDI BETWEEN THE UNITED STATES AND GREAT BRITAIN IN REGARD TO INSHORE FISHERIES ON THE TREATY COAST OF NEWFOUNDLAND.

AGREEMENT EFFECTED BY EXCHANGE OF NOTES AT LONDON OCT. 6–8, 1906.

The American Ambassador to the British Foreign Office.

AMERICAN EMBASSY, LONDON, *October 6th, 1906.*

SIR, I am authorized by my Government to ratify a *modus vivendi* in regard to the Newfoundland Fishery Question on the basis of the Foreign Office Memorandum, dated the 25th of September, 1906, in which you accept the arrangement set out in my Memorandum of the 12th of September and consent accordingly to the use of purse seines by American fishermen during the ensuing season, subject of course to due regard being paid in the use of such implements to other modes of fishery, which, as you state, is only intended to secure that there shall be the same spirit of give and take and of respect for common rights between the users of purse seines and the users of stationary nets as would be expected to exist if both sets of fishermen employed the same gear.

My Government understand by this that the use of purse seines by American fishermen is not to be interfered with, and that the shipment of Newfoundlanders by American fishermen outside the 3 mile limit is not to be made the basis of interference or to be penalized; at the same time they are glad to assure His Majesty's Government, should such shipments be found necessary, that they will be made far enough from the exact 3 mile limit to avoid any reasonable doubt.

On the other hand it is also understood that our fishermen are to be advised by my Government, and to agree, not to fish on Sunday.

It is further understood that His Majesty's Government will not bring into force the Newfoundland Foreign Fishing Vessels Act of 1906 which imposes on American fishing vessels certain restrictions in addition to those imposed by the Act of 1905, and also that the provisions of the first part of Section I of the Act of 1905, as to boarding and bringing into port, and also the whole of Section 3 of the same Act, will not be regarded as applying to American fishing vessels.

It also being understood that our fishermen will gladly pay light dues if they are not deprived of their rights to fish, and that our fishermen are not unwilling to comply with the provisions of the Colonial Customs Law as to reporting at a custom house when physically possible to do so.

I need not add that my Government are most anxious that the provisions of the *modus vivendi* should be made effective at the earliest possible moment. I am glad to be assured by you that this note will

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be considered as sufficient ratification of the *modus vivendi*, on the part of my Government.

I have the honour to be, with the highest consideration, Sir,

Your most obedient, humble Servant, WHITELAW REID.

The Right Honble. Sir EDWARD GREY, Bt.,
Etc. Etc. Etc.

The British Foreign Office to the American Ambassador.

No. 34002.] FOREIGN OFFICE, *October 8th, 1906.*

YOUR EXCELLENCY, I have received with satisfaction the note of the 6th instant in which Your Excellency states that you have been authorized by your Government to ratify a *modus vivendi* in regard to the Newfoundland Fishery Question on the basis of the Memorandum which I had the honour to communicate to you on the 25th ultimo, and I am glad to assure Your Excellency that the note in question will be considered by His Majesty's Government as a sufficient ratification of that arrangement on the part of the United States Government.

His Majesty's Government fully share the desire of your Government that the provisions of the *modus vivendi* should be made effective at the earliest moment possible and the necessary instructions for its observance were accordingly sent to the Government of Newfoundland immediately on receipt of Your Excellency's communication.

I have the honour to be, with the highest Consideration,

Your Excellency's most obedient, humble Servant,

(In the absence of the Secretary of State)

E. GORST.

His Excellency the Honourable WHITELAW REID,
Etc. Etc. Etc.

MEMORANDUM.

My Government hears with the greatest concern and regret that in the opinion of His Majesty's Government there is so wide a divergence of views with regard to the Newfoundland Fisheries that an immediate settlement is hopeless.

But it is much gratified with His Majesty's Government's desire to reach a *modus vivendi* for this season, and appreciates the readiness to waive the Foreign Fishing Vessels Act of 1906. This and other restrictive legislation had compelled our fishermen to use purse seines or abandon their treaty rights.

My Government sees in the offer not to apply Section 3, Act of 1905 and that part of Section 1 relating to boarding fishing vessels and bringing them into port fresh proof of a cordial disposition not to press unduly this kind of regulation.

Our fishermen will also gladly pay light dues, if not hindered in their right to fish. They are not unwilling either, to comply with the regulation to report at Custom Houses, when possible. It is sometimes physically impossible, however, to break through the ice for that purpose.

Most unfortunately the remaining proposals, those as to purse-seining and Sunday fishing, present very grave difficulties.

We appreciate perfectly the desire of His Majesty's Government to prevent Sunday fishing. But if both this and purse-seine fishing are taken away, as things stand there might be no opportunity for profita-

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ble fishing left under our treaty rights. We are convinced that purse seines are no more injurious to the common fishery than the gill nets commonly used—are not in fact so destructive and do not tend to change the migratory course of the herring as gill nets do, through the death of a large percentage of the catch and consequent pollution of the water.

The small amount of purse-seining this season could not of course materially affect the common fishery anyway. Besides many of our fishermen have already sailed, with purse seines as usual, and the others are already provided with them. This use of the purse seine was not the free choice of our fishermen. They have been driven to it by local regulations and the continued use of it at this late date this year seems vital.

But we will renounce Sunday fishing for this season if His Majesty's Government will consent to the use of purse seines, and we cannot too strongly urge an acceptance of this solution.

AMERICAN EMBASSY, LONDON, *September, 12, 1906.*

MEMORANDUM.

His Majesty's Government have considered, after consultation with the Government of Newfoundland, the proposals put forward in the Memorandum communicated by the United States Ambassador on the 12th instant, respecting the suggested "modus vivendi" in regard to the Newfoundland Fishery question.

They are glad to be able to state that they accept the arrangement set out in the above Memorandum and consent accordingly to the use of purse seines by United States fishermen during the ensuing season, subject, of course, to due regard being paid, in the use of such implements, to other modes of fishery.

His Majesty's Government trust that the United States Government will raise no objection to such a stipulation, which is only intended to secure that there shall be the same spirit of give and take and of respect of common rights between the users of purse seines and the users of stationary nets as would be expected to exist if both sets of fishermen employed the same gear.

They further hope that, in view of this temporary authorization of the purse seines, the United States Government will see their way to arranging that the practice of engaging Newfoundland fishermen just outside the three mile limit which to some extent prevailed last year should not be resorted to this year.

An arrangement to this effect would save both His Majesty's Government and the Newfoundland Government from embarrassment which it is conceived, having regard to the circumstances in which the "modus vivendi" is being settled, the United States Government would not willingly impose upon them. Moreover it is not in itself unreasonable, seeing that the unwillingness of the United States Government to forego the use of purse seines appears to be largely based upon the inability of their fishermen to engage local men to work the form of net recognized by the Colonial fishery regulations.

The United States Government assured His Majesty's late Government in November last that they would not countenance a specified evasion of the Newfoundland Foreign Fishing Vessels Act 1905, and the proposed arrangement would appear to be in accordance with the spirit which prompted that assurance.

FOREIGN OFFICE, *September 25, 1906.*

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AGREEMENT EFFECTED BY EXCHANGE OF NOTES AT LONDON SEPTEMBER 4–6, 1907.

The American Ambassador to the British Foreign Office.

AMERICAN EMBASSY, *London, September 4, 1907.*

SIR:—

I am authorized by my Government to ratify a *Modus Vivendi* in regard to the Newfoundland fishery question, as follows:

It is agreed that the fisheries shall be carried on during the present year substantially as they were actually carried on for the most of the time by mutual agreement, under the *Modus Vivendi* of 1906.

(1) It is understood that His Majesty's Government will not bring into force the Newfoundland foreign fishing vessels act of 1906, which imposes on American fishing vessels certain restrictions in addition to those imposed by the act of 1905, and also that the provisions of the first part of Section One of the act of 1905, as to boarding and bringing into port, and also the whole of Section three of the same act, will not be regarded as applying to American fishing vessels.

(2) In consideration of the fact that the shipment of Newfoundlanders by American fishermen outside the three-mile limit is not to be made the basis of interference or to be penalized, my Government waives the use of purse seines by American fishermen during the term governed by this agreement, and also waives the right to fish on Sundays.

(3) It is understood that American fishing vessels will make their shipment of Newfoundlanders, as fishermen, sufficiently far from the exact three-mile limit to avoid reasonable doubt.

(4) It is further understood that American fishermen will pay light dues when not deprived of their rights to fish, and will comply with the provisions of the colonial customs law as to reporting at a custom house when physically possible to do so.

I need not add that my Government is most anxious that the provisions of this *Modus Vivendi* should be made effective at the earliest possible moment, and that, in view of this, and of the actual presence of our fishing fleet on the treaty shore, we do not feel that an exchange of ratifications should be longer delayed. But my Government has every desire to make the arrangement, pending arbitration, as agreeable as possible to the Newfoundland authorities consistent with the due safeguarding of treaty rights which we have enjoyed for nearly a century. If, therefore, the proposals you have recently shown me from the Premier of Newfoundland or any other changes in the above *Modus Vivendi* should be proposed by mutual agreement between the Newfoundland authorities and our fishermen, having due regard to the losses that might be incurred by a change of plans so long after preparations for the season's fishing had been made and the voyage begun, my Government will be ready to consider such changes with you in the most friendly spirit, and if found not to compromise our rights, to unite with you in ratifying them at once.

I am glad to be assured by you that this note will be considered as sufficient ratification of the *Modus Vivendi* on the part of my Government.

I have the honor to be, with the highest consideration, Sir, Your most obedient humble servant,

WHITELAW REID.

The Right Honorable Sir EDWARD GREY, Baronet, &c &c &c

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The British Foreign Office to the American Ambassador.

FOREIGN OFFICE, *September 6th, 1907.*

YOUR EXCELLENCY. I have the honour to acknowledge the receipt of Your Excellency's note of the 4th instant, containing the terms of the *Modus Vivendi* with regard to the Newfoundland fisheries,—which you are authorized by your Government to ratify.

I am glad to assure your Excellency that His Majesty's Government agrees to the terms of the *Modus Vivendi* and that your Excellency's note will be considered by His Majesty's Government as a sufficient ratification of that arrangement on the part of His Majesty's Government.

His Majesty's Government fully shares the desire of your Government that the provisions of the *Modus Vivendi* should be made effective at the earliest possible moment, and the necessary steps will be taken by His Majesty's Government to secure its observance.

His Majesty's Government takes note of the conciliatory offer of the United States Government to consider in a most friendly spirit any changes in the *Modus Vivendi* which may be agreed upon locally between the Newfoundland authorities and the United States fishermen and which may be acceptable both to the United States Government and to His Majesty's Government.

I have the honour to be, with the highest consideration, Your Excellency's most obedient humble servant,

E. GREY].

His Excellency The Honorable WHITELAW REID, *&c &c &c*

AGREEMENT EFFECTED BY EXCHANGE OF NOTES AT LONDON, JULY 15–23, 1908.

The British foreign office to the American Ambassador.

FOREIGN OFFICE, *July 15, 1908.*

YOUR EXCELLENCY, On the 18th ultimo Your Excellency proposed on behalf of the United States Government that, as arbitration in regard to the Newfoundland fisheries question could not be arranged before the forthcoming fishery season, the "modus vivendi" of last year should be renewed with the same elasticity as before for the parties concerned to make local arrangements satisfactory to both sides.

I have the honour to be, with the highest consideration, Your land Government, having been cosulted on the subject, have expressed the desire that the herring fishery during the ensuing season should be conducted on the same principles as in the season of 1907, and formally undertake to permit during this year the conduct of the herring fishery as last year.

As the arrangements for last year were admittedly satisfactory to all concerned in the fishing, His Majesty's Government hope that the United States Government will see their way to accept this formal assurance on the part of the Newfoundland government as a satisfactory arrangement for the season of 1908. If this course be adopted

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it would seem unnecessary to enter into any further formal arrangements, seeing that the communication of this assurance to the United States Government and its acceptance by them would be tantamount to a modus vivendi.

I have the honor to be, with the highest consideration, your excellency's most obedient, humble servant,

For Sir EDWARD GREY,
LOUIS MALLET.

His excellency the Honorable Whitelaw Reid, etc., etc., etc.

The American ambassador to the British foreign office.

AMERICAN EMBASSY, *London, July 23, 1908.*

SIR, The reply, in your letter of July 15, 1908, to my proposal of June 18th, for a renewal of last year's modus vivendi for the approaching Newfoundland fisheries season, with the same elasticity as before for local arrangements, has been duly considered.

I am gratified to learn that the Newfoundland Government was so well satisfied with the result of these arrangements under the modus vivendi for last year that it offers a formal undertaking that the American fishermen shall be permitted to conduct the herring fisheries this year in the same way.

It is proper to observe that our fishermen would have preferred last year, and would prefer now to work the fisheries with purse seines, as heretofore, as provided in the modus vivendi. But they yielded last year to the strong wishes of the Newfoundland Government in this matter, and joined in the arrangement under the elastic clause at the close of the modus vivendi by which, with the approval of the British and American Governments, they gave up the use of purse seines in return for certain concessions. I must reserve their right to this use, as heretofore enjoyed, as not now abandoned, and therefore to be duly considered in the pending arbitration before the Hague Tribunal.

But with this reservation and with the approval of my Government, I now have pleasure in accepting the offer that the herring fishery during the ensuing season shall be conducted on the same principles as in the season of 1907, and the formal undertaking against interference with this by the Newfoundland Government, as a substantial agreement on my proposal of June 18th.

We unite also with you in regarding this exchange of letters as constituting in itself a satisfactory agreement for the season of 1908, without the necessity for any further formal correspondence.

I am glad to add that Mr. Alexander of the United States Fish Commission, will be sent again this year to the treaty shore, and that my Government feels sure that, through his influence, there will be general willingness to carry out the spirit of the understanding, and work on the lines of least resistance.

I have the honor to be, with the highest consideration, Sir, your most obedient humble servant,

WHITELAW REID.

The right honorable Sir EDWARD GREY, Bart., etc., etc., etc.

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BETWEEN GREAT BRITAIN AND FRANCE.

TREATY OF APRIL 11, 1713.

[Extrait.]

XIII. L'Ile de Terreneuve, avec les Iles adjacentes, appartiendra désormais et absolument à la Grande Bretagne, et à cette fin le Roi Très Chrétien fera remettre à ceux qui se trouveront à ce commis en ce Pays là, dans l'espace de 7 mois à compter du jour de l'échange des Ratifications de ce Traité, ou plutôt si faire se peut, la Ville et le Fort de Plaisance, et autres lieux que les François pourroient encore posséder dans la dite Ile, sans que le dit Roi Très Chrétien, ses Héritiers et Successeurs, ou quelques uns de ses Sujets puissent désormais prétendre quoique ce soit, et en quelque tems que ce soit, sur la dite Ile, et les Iles adjacentes en tout ou en partie. Il ne leur sera pas permis non plus d'y fortifier aucun lieu, ni d'y établir aucune habitation en façon quelconque, si ce n'est des échafauds et cabanes nécessaires et usitées pour sécher le poisson, ni aborder dans la dite Ile dans d'autres tems, que celui qui est propre pour pêcher, et nécessaire pour sécher le poisson.

Dans la dite Ile il ne sera pas permis aux dits Sujets de la France de pêcher et de sécher le poisson en aucune autre partie, que depuis le lieu appelé Cap de Bonavista, jusqu'à l'extremité septentrionale de la dite Ile, et de là en suivant la partie occidentale, jusqu'au lieu appelé Pointe-Riche. Mais l'Ile dite Cap Breton et

[Extract.—Translation.]

XIII. The Island called Newfoundland, with the adjacent Islands, shall, from this time forward, belong of right wholly to Britain; and to that end the Town and Fortress of Placentia, and whatever other places in the said Island are in the Possession of the French, shall be yielded and given up, within 7 months from the exchange of the Ratifications of this Treaty, or sooner if possible, by the Most Christian King, to those who have a Commission from the Queen of Great Britain for that purpose. Nor shall the Most Christian King, his Heirs and Successors, or any of their Subjects, at any time hereafter lay claim to any right to the said Island and Islands, or to any part of it or them. Moreover it shall not be lawful for the Subjects of France, to fortify any place in the said Island of Newfoundland, or to erect any buildings there, besides stages made of boards, and huts necessary and usual for drying of fish; or to resort to the said Island beyond the time necessary for fishing and drying of fish.

But it shall be allowed to the Subjects of France, to catch fish and to dry them on land, in that part only, and in no other besides that, of the said Island of Newfoundland, which stretches from the place called Cape Bonavista, to the northern point of the said Island, and from thence running down by the western side, reaches

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toutes les autres quelconques, situées dans l'embouchure et dans le Golphe de St. Laurent, demeureront à l'avenir à la France, avec l'entière faculté au Roi Très Chrétien d'y fortifier une ou plusieurs places.

as far as the place called Point Riche. But the Island called Cape Breton, as also all others, both in the mouth of the River of St. Lawrence, and in the Gulph of the same name, shall hereafter belong of right to the French; and the Most Christian King shall have all manner of liberty to fortify any place or places there.

TREATY OF OCTOBER 18, 1748.

[Extract.]

III. The treaties of Westphalia of 1648; those of Madrid, between the crowns of England and Spain, of 1667 and 1670; the treaties of peace of Nimeguen of 1678 and 1679; of Ryfwick of 1697; of Utrecht of 1713; of Baden of 1714; the treaty of the triple alliance of the Hague of 1717; that of the quadruple alliance of London of 1718; and the treaty of peace of Vienna of 1738, serve as a basis and foundation to the general peace, and to the present treaty; and, for this purpose, they are renewed and confirmed in the best form, and as if they were herein inserted word for word; so that they shall be punctually observed for the future in all their tenor, and religiously executed on the one side and the other; such points, however, as have been derogated from in the present treaty excepted.

TREATY OF FEBRUARY 10, 1763.

[Extrait.]

V. Les Sujets de la France auront la liberté de la Pêche, et de la Sécherie, sur une partie des côtes de l'Ile de Terreneuve, telle qu'elle est spécifiée par l'Article XIII du Traité d'Utrecht; lequel Article est renouvelé et confirmé par le présent Traité, (á l'exception de ce qui regarde l'Ile du Cap Breton, ainsi que les autres Iles et côtes dans l'embouchure, et dans le Golphe St. Laurent.) Et Sa Majesté Britannique consent de laisser aux Sujets du Roi Très Chrétien la liberté de pêcher dans le Golphe St. Laurent, à condition que les Sujets de la France n'exercent la dite Pêche qu'à la dis-

[Extract.—Translation.]

V. The Subjects of France shall have the liberty of Fishing and Drying, on a part of the coasts of the Island of Newfoundland, such as it is specified in Article XIII of the Treaty of Utrecht; which Article is renewed and confirmed by the present Treaty, (except what relates to the Island of Cape Breton, as well as to the other Islands and coasts in the mouth and in the Gulph of St. Lawrence.) And His Britannic Majesty consents to leave to the Subjects of the Most Christian King the liberty of fishing in the Gulph St. Lawrence, on condition that the Subjects of France

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tance de 3 lieues de toutes les côtes appartenantes à la Grande Bretagne, soit celles du Continent, soit celles des Iles situées dans le dit Golphe St. Laurent: et pour ce qui concerne la Pêche sur les côtes de l'Ile du Cap Breton hors du dit Golphe, il ne sera pas permis aux Sujets du Roi Très Chrétien d'exercer la dite Pêche qu'à la distance de 15 lieues des côtes de l'Ile du Cap Breton; et la Pêche sur les côtes de la Nouvelle Ecosse ou Acadie, et par tout ailleurs hors du dit Golphe, restera sur le pied des Traités antérieurs.

VI. Le Roi de la Grande Bretagne cède les Iles de St. Pierre et de Miquelon, en toute propriété, à Sa Majesté Très Chrétienne, pour servir d'abri aux Pêcheurs François: et Sa dite Majesté Très Chrétienne s'oblige à ne point fortifier les dites Iles, à n'y établir que des Bâtimens civils pour la commodité de la Pêche, et à n'y entretenir qu'une Garde de 50 Hommes pour la Police.

do not exercise the said Fishery, but at the distance of 3 leagues from all the coasts belonging to Great Britain, as well those of the Continent, as those of the Islands situated in the said Gulph St. Lawrence. And as to what relates to the Fishery on the coasts of the Island of Cape Breton out of the said Gulph, the Subjects of the Most Christian King shall not be permitted to exercise the said Fishery, but at the distance of 15 leagues from the coasts of the Island of Cape Breton; and the Fishery on the coasts of Nova Scotia or Acadia, and everywhere else out of the said Gulph, shall remain on the foot of former Treaties.

VI. The King of Great Britain cedes the Islands of St. Pierre and Miquelon, in full right, to His Most Christian Majesty, to serve as a shelter to the French Fishermen: and His said Most Christian Majesty engages not to fortify the said Islands; to erect no buildings upon them, but merely for the convenience of the Fishery; and to keep upon them a Guard of 50 Men only for the Police.

TREATY OF SEPTEMBER 3, 1783.

[Extrait.]

IV. Sa Majesté le Roi de la Grande Bretagne est maintenu dans la propriété de l'Ile de Terreneuve, et des Iles adjacentes, ainsi que le tout lui a été assuré par l'Article XIII du Traité d'Utrecht, à l'exception des Iles de St. Pierre et Miquelon, lesquelles sont cédées en tout propriété, par le présent Traité, à Sa Majesté Très Chrétienne.

V. Sa Majesté le Roi Très Chrétien, pour prévenir les querelles qui ont eu lieu jusqu'à pré-

[Extract.—Translation.]

IV. His Majesty the King of Great Britain is maintained in his right to the Island of Newfoundland, and to the adjacent Islands, as the whole were assured to him by the XIIIth Article of the Treaty of Utrecht; excepting the Islands of St. Pierre and Miquelon, which are ceded in full right, by the present Treaty, to His Most Christian Majesty.

V. His Majesty the Most Christian King, in order to prevent the quarrels which have hitherto arisen

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sent entre les 2 Nations Angloise et Françoise, consent à renoncer au droit de Pêche, qui lui appartient en vertu de l'Article XIII susmentionnée du Traité d'Utrecht, depuis le Cap Bonavista jusqu'au Cap St. Jean, situé sur la côte Orientale de Terreneuve, par les 50 dégrés de latitude Septentrionale; et Sa Majesté le Roi de la Grande Bretagne consent, de son côte, que la Pêche assignée aux Sujets de Sa Majesté Très Chrétienne, commençant au dit Cap St. Jean, passant par le Nord, et descendant par la côte Occidentale de l'Ile de Terreneuve, s'étende jusqu'à l'endroit appelé Cap Raye, situé au 47e dégré, 50 minutes de latitude. Les Pêcheurs François jouiront de la Pêche qui leur est assignée par le présent Article, comme ils ont eu droit de jouir de celle qui leur est assignée par le Traité d'Utrecht.

VI. A l'égard de la Pêche dans le Golphe de St. Laurent, les François continueront à l'exercer conformément à l'Article V du Traité de Paris.

between the 2 Nations of England and France, consents to renounce the right of Fishing, which belongs to him in virtue of the aforesaid Article of the Treaty of Utrecht, from Cape Bonavista to Cape St. John, situated on the Eastern coast of Newfoundland, in 50 degrees North latitude; and His Majesty the King of Great Britain consents, on his part, that the Fishery assigned to the Subjects of His Most Christian Majesty, beginning at the said Cape St. John, passing to the North, and descending by the Western coast of the Island of Newfoundland, shall extend to the place called Cape Raye, situated in 47 degrees, 50 minutes latitude. The French Fishermen shall enjoy the Fishery which is assigned to them by the present Article, as they had the right to enjoy that which was assigned to them by the Treaty of Utrecht.

VI. With regard to the Fishery in the Gulph of St. Lawrence, the French shall continue to exercise it conformably to the Vth Article of the Treaty of Paris.

Annex 1.

BRITISH DECLARATION OF SEPTEMBER 3, 1783.

[Extrait.]

Le Roi étant entierement d'accord avec Sa Majesté Très Chrétienne sur les Articles du Traité Définitif, cherchera tous les moyens qui pourront non seulement en assurer l'exécution, avec la bonne foi et la ponctualité qui lui sont connues, mais de plus donnera, de son côté, toute l'efficace possible aux principes qui empêcheront jusqu'au moindre germe de dispute à l'avenir.

A cette fin, et pourque les Pêcheurs des 2 Nations ne fassent

[Extract.]

The King having entirely agreed with His Most Christian Majesty upon the Articles of the Definitive Treaty, will seek every means which shall not only ensure the execution thereof, with his accustomed good faith and punctuality, but will besides give, on his part, all possible efficacy to the principles which shall prevent even the least foundation of dispute for the future.

To this end, and in order that the Fishermen of the 2 Nations

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point naître des querelles journalières, Sa Majesté Britannique prendra les mesures les plus positives pour prévenir que ses Sujets ne troublent, en aucune manière, par leur concurrence, la Pêche des François, pendant l'exercice temporaire qui leur est accordé, sur les côtes de l'Ile de Terreneuve; et elle fera retirer, à cet effet, les établissemens sédentaires qui y seront formés. Sa Majesté Britannique donnera des ordres pour que les Pêcheurs François ne soient pas gênés dans la coupe de bois nécessaire pour la réparation de leurs échaffaudages, cabanes, et Bâtimens de Pêche.

L'Article XIII du Traité d'Utrecht, et la méthode de faire la Pêche qui a été de tout tems reconnue, sera le modèle sur lequel la Pêche s'y fera. On n'y contreviendra pas, ni d'une part ni de l'autre; les Pêcheurs François ne bâtissant rien que leurs échaffaudages, se bornant à réparer leurs Bâtimens de Pêche, et n'y hivernant point; les Sujets de Sa Majesté Britannique, de leur part, ne molestant aucunement les Pêcheurs François durant leurs Pêches, ni ne dérangeant leurs échaffaudages durant leur absence.

Le Roi de la Grande Bretagne, en cédant les Iles de St. Pierre et de Miquelon à la France, les regarde comme cédées à fin de servir réellement d'abri aux Pêcheurs François, et dans la confiance entière que ces Possessions ne deviendront point un objet de jalousie entre les 2 Nations; et que la Pêche entre les dites Iles, et celle de Terreneuve, sera bornée à Micanal.

may not give cause for daily quarrels, His Britannic Majesty will take the most positive measures for preventing his Subjects from interrupting, in any manner, by their competition, the Fishery of the French, during the temporary exercise of it which is granted to them, upon the coasts of the Island of Newfoundland; and he will, for this purpose, cause the fixed settlements which shall be formed there, to be removed. His Britannic Majesty will give orders that the French Fishermen be not incommoded in cutting the wood necessary for the repair of their scaffolds, huts, and Fishing Vessels.

The XIIIth Article of the Treaty of Utrecht, and the method of carrying on the Fishery, which has at all times been acknowledged, shall be the plan upon which the Fishery shall be carried on there; it shall not be deviated from by either Party; the French Fishermen building only their scaffolds, confining themselves to the repair of their Fishing Vessels, and not wintering there; the Subjects of His Britannic Majesty, on their part, not molesting, in any manner, the French Fishermen, during their fishing, nor injuring their scaffolds during their absence.

The King of Great Britain, in ceding the Islands of St. Pierre and Miquelon to France, regards them as ceded for the purpose of serving as a real shelter to the French Fishermen, and in full confidence that these Possessions will not become an object of jealousy between the 2 Nations; and that the Fishery between the said Islands and that of Newfoundland shall be limited to the middle of the Channel.

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ANNEX 2.

FRENCH COUNTER DECLARATION OF SEPTEMBER 3, 1783.

[Extrait.]

LES principes qui ont dirigé le Roi, dans tout le cours des Négociations qui ont précédé le rétablissement de la Paix, ont dû convaincre le Roi de la Grande Bretagne, que Sa Majesté n'a eu d'autre but que de la rendre solide et durable, en prévenant, autant qu'il est possible, dans les 4 parties du Monde, tout sujet de discussion et de querelle. Le Roi de la Grande Bretagne met indubitablement trop de confiance dans la droiture des intensions de Sa Majesté, pour ne point se reposer sur l'attention constante qu'elle aura d'empêcher que les Iles St. Pierre et Miquelon ne deviennent un objet de jalousie entre les 2 Nations.

Quant à la Pêche sur les côtes de Terreneuve, qui a été l'objet des nouveaux arrangemens dont les 2 Souverains sont convenus sur cette matière, elle est suffisamment exprimée par l'Article V du Traité de Paix signé ce-jourd'hui, et par la Déclaration remise également aujourd'hui par l'Ambassadeur Extraordinaire et Plénipotentiaire de Sa Majesté Britannique; et Sa Majesté déclare qu'elle est pleinement satisfaite à cet égard.

Pour ce qui est de la Pêche entre l'Ile de Terreneuve et celles de St. Pierre et Miquelon, elle ne pourra se faire, de part et d'autre, que jusqu'à Mi-canal, et Sa Majesté donnera les ordres le plus précis, pour que les Pêcheurs François n'outre-passent point cette ligne. Sa Majesté est dans la ferme confiance que le Roi de la Grande Bretagne donnera de pareils ordres aux Pêcheurs Anglois.

[Extract.]

THE principles which have guided the King, in the whole course of the Negotiations which preceded the re-establishment of Peace, must have convinced the King of Great Britain, that His Majesty has had no other design than to render it solid and lasting, by preventing, as much as possible, in the 4 quarters of the World, every subject of discussion and quarrel. The King of Great Britain undoubtedly places too much confidence in the uprightness of His Majesty's intentions not to rely upon his constant attention to prevent the Islands of St. Pierre and Miquelon from becoming an object of jealousy between the 2 Nations.

As to the Fishery on the coasts of Newfoundland, which has been the object of the new arrangements settled by the 2 Sovereigns upon this matter, it is sufficiently ascertained by the Vth Article of the Treaty of Peace signed this day, and by the Declaration likewise delivered to-day, by His Britannic Majesty's Ambassador Extraordinary and Plenipotentiary; and His Majesty declares that he is fully satisfied on this head.

In regard to the Fishery between the Island of Newfoundland and those of St. Pierre and Miquelon, it is not to be carried on by either Party, but to the middle of the Channel, and His Majesty will give the most positive orders that the French Fishermen shall not go beyond this line. His Majesty is firmly persuaded that the King of Great Britain will give like orders to the English Fishermen.

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TREATY OF MAY 30, 1814.

[Extrait.]

VIII. Sa Majesté Britannique, stipulant pour elle et ses Alliés, s'engage à restituer à Sa Majesté Très-Chrétienne, dans les délais qui seront ci-après fixées, les Colonies, Pêcheries, Comptoirs et Etablissemens de tout genre que la France possédait au 1er Janvier, 1792, dans les Mers et sur les Continents de l'Amérique, de l'Afrique, et de l'Asie; à l'exception toutefois des Iles de Tobago et de St. Lucie, et de l'Ile de France, et de ses Dépendances, nommément Rodrigue et les Séchelles, lesquelles Sa Majesté Très-Chrétienne cède en toute propriété et Souveraineté à Sa Majesté Britannique, comme aussi de la partie de St. Domingue cédée à la France par la Paix de Bâsle*, et que Sa Majesté Très-Chrétienne rétrocède à Sa Majesté Catholique en toutê propriété et Souveraineté.

XIII. Quant au droit de Pêche des Français sur le Grand Banc de Terreneuve, sur les Côtes de l'Ile de ce nom, et des Iles adjacentes, dans le Golfe de St. Laurent, tout sera remis sur le même pied qu'en 1792.

[Extract.]

VIII. His Britannic Majesty, stipulating for himself and his Allies, engages to restore to His Most Christian Majesty, within the term which shall be hereafter fixed, the Colonies, Fisheries, Factories, and Establishments of every kind which were possessed by France on the 1st of January, 1792, in the Seas and on the Continents of America, Africa, and Asia; with the exception, however, of the Islands of Tobago and St. Lucie, and of the Isle of France and its Dependencies, especially Rodrigue and les Séchelles, which several Colonies and Possessions His Most Christian Majesty cedes in full right and Sovereignty to His Britannic Majesty, and also the portion of St. Domingo ceded to France by the Treaty of Basle, and which His Most Christian Majesty restores in full right and Sovereignty to His Catholic Majesty.

XIII. The French right of Fishery upon the Great Bank of Newfoundland, upon the Coasts of the Island of that name, and of the adjacent Islands in the Gulf of St. Lawrence, shall be replaced upon the footing on which it stood in 1792.

TREATY OF NOVEMBER 20, 1815.

[Extrait.]

XI. Le Traité de Paris, du 30 Mai, 1814, et l'Acte final du Congrès de Vienne, du 9 Juin, 1815, sont confirmés et seront maintenus dans toutes celles de leurs dispositions qui n'auraient pas été modifiées par les clauses du présent Traité.

[Extract.]

XI. The Treaty of Paris of the 30th of May, 1814, and the final Act of the Congress at Vienna of the 9th of June, 1815, are confirmed, and shall be maintained in all such of their enactments which shall not have been modified by the Articles of the present Treaty.

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TREATY OF JANUARY 14, 1857.*

[Ratifications exchanged, January 16, 1857.]

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the Emperor of the French, being desirous to remove for the future all cause of misunderstanding between their respective subjects relative to the fisheries on the coast of the Island of Newfoundland and the neighbouring coasts, by regulating with exactness the rights and privileges of their said subjects, have resolved to conclude a Convention for that purpose, and have named as their Plenipotentiaries, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable George William Frederick, Earl of Clarendon, Baron Hyde of Hindon, a Peer of the United Kingdom, a Member of Her Britannic Majesty's Most Honourable Privy Council, Knight of the Most Noble Order of the Garter, Knight Grand Cross of the Most Honourable Order of the Bath, Her Britannic Majesty's Principal Secretary of State for Foreign Affairs; and the Right Honourable Henry Labouchere, a Member of Her Britannic Majesty's Most Honourable Privy Council, a Member of Parliament, Her Britannic Majesty's Principal Secretary of State for the Colonies;

And His Majesty the Emperor of the French, the Sieur John Gilbert Victor Fialin, Count of Persigny, a Senator, Grand Cross of the Imperial Order of the Legion of Honour, Grand Cordon of the Imperial Order of the Medjidie of Turkey, Grand Cross of the Order of St. Maurice and St. Lazarus of Sardinia, Grand Cross

SA Majesté la Reine du Royaume Uni de la Grande Bretagne et d'Irlande, et Sa Majesté l'Empereur des Français, désirant écarter dans l'avenir toute cause de contestation entre leurs sujets respectifs dans l'exercice de la pêche sur les côtes de l'Ile de Terre-Neuve et sur les côtes avoisinantes, en réglant d'une manière précise les droits et privilèges des dits sujets, ont résolu de conclure une Convention à cet effet, et ont nommé pour leurs Plénipotentiaires, savoir:

Sa Majesté la Reine du Royaume Uni de la Grande Bretagne et d'Irlande, le Très Honorable George Guillaume Frédéric, Comte de Clarendon, Baron Hyde de Hindon, Pair du Royaume Uni, Conseiller de Sa Majesté Britannique en Son Conseil Privé, Chevalier du Très Noble Ordre de la Jarretière, Chevalier Grand-Croix du Très Honorable Ordre du Bain, Principal Secrétaire d'Etat de Sa Majesté Britannique pour les Affaires Etrangères; et le Très Honorable Henri Labouchere, Conseiller de Sa Majesté Britannique en Son Conseil Privé, Membre du Parlement, Principal Secrétaire d'Etat de Sa Majesté Britannique pour les Colonies;

Et Sa Majesté l'Empereur des Français, le Sieur Jean Gilbert Victor Fialin, Comte de Persigny, Sénateur, Grand-Croix de l'Ordre Impérial de la Légion d'Honneur, Grand Cordon de l'Ordre Impérial du Medjidié de Turquie, Grand-Croix de l'Ordre des Saints Maurice et Lazare de Sardaigne, Grand-Croix de l'Or-

* Not sanctioned by the British Legislature, or by the Provincial Legislature of Newfoundland.

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of the Order of Danebrog of Denmark, His Ambassador to Her Britannic Majesty;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:—

ARTICLE I.

French subjects shall have the exclusive right to fish, and to use the strand for fishery purposes, during the season elsewhere specified (Article VIII), on the east coast of Newfoundland, from Cape St. John to the Quirpon Islands. They shall also have the right to fish, and to use the strand for fishery purposes, during the said season, to the exclusion of British subjects, on the north coast of Newfoundland, from the Quirpon Islands to Cape Norman; and on the west coast, in and upon the five fishing-harbours of Port-au-Choix, Small Harbour (or Petit Port), Port au Port, Red Island, and Cod Roy Island. Such exclusive fishing, from the Quirpon Islands to Cape Norman, shall extend to a distance of three marine miles due north from a straight line joining Cape Norman and Cape Bauld, and as regards the five harbours, shall extend to within a radius of three marine miles in all directions from the centre of each such harbour, but with power to the Commissioners or Umpire elsewhere provided for in this Convention to alter such limits for each harbour in accordance with the existing practice.

ARTICLE II.

British subjects shall have the right, concurrently with French subjects, to fish on the west coast of Newfoundland, from Cape Norman to Cape Ray, except at

dre du Danebrog de Danemark, Son Ambassadeur près Sa Majesté Britannique;

Lesquels, après s'être communiqué leurs pleins pouvoirs respectifs, trouvés en bonne et due forme, ont arrêté et conclu les Articles suivants:—

ARTICLE I.

Les sujets Français auront le droit exclusif de pêcher, et de se servir du rivage pour les besoins de leur pêche, pendant la saison spécifiée ailleurs (Article VIII), sur la côte orientale de Terre-Neuve, depuis le Cap St. Jean jusqu'aux Iles Quirpon. Ils auront aussi le droit de pêcher et de se servir du rivage pour les besoins de leur pêche pendant la dite saison, à l'exclusion des sujets Anglais, sur la côte septentrionale de Terre-Neuve, depuis les Iles Quirpon jusqu'au Cap Normand; et sur la côte occidentale, dans et sur les cinq hâvres de pêche de Port-au-Choix, Petit Hâvre ou Petit Port, Port à Port, l'Ile Rouge, et l'Ile Cod Roy. Ces droits de pêche exclusive s'étendront, entre les Iles Quirpon et le Cap Normand, jusqu'à une distance de trois milles marins dans le nord vrai de la ligne droite qui joint le Cap Normand au Cap Bauld, et pour les cinq hâvres, jusqu'à trois milles marins dans toutes les directions à partir du centre de chacun d'eux; toutefois, les Commissaires ou Arbitre désignés dans une autre partie de cette Convention pourront pour chaque hâvre modifier les dites limites selon la pratique existante.

ARTICLE II.

Les sujets Anglais auront le droit, concurremment avec les sujets Français, de pêcher sur la côte occidentale de Terre-Neuve, depuis le Cap Normand jusqu'au

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the five above-mentioned points; but French subjects shall have the exclusive use of the strand for fishery purposes during the said season, from Cape Norman to Rock Point, in the Bay of Islands north of the River Humber, in latitude 49° 5′ (about), in addition to the strand of the reserved harbours.

ARTICLE III.

French subjects shall have the right, concurrently with British subjects, to fish on the coasts of Labrador from Blanc Sablon to Cape Charles, and of North Belle-isle, together with liberty to dry and cure fish on any of the portions of the coast of North Belle-isle aforesaid, which shall not be settled when this Convention shall come into operation. The British Government, however, retains the right to erect thereon buildings for military or public purposes; and if any settlement for permanent habitation shall be thereafter established on any portion of the coast of the said island, the right of French subjects to dry and cure fish on such portion of the coast shall cease, one season's notice of such settlement having been given beforehand to the French Commander on the station.

The said French concurrent right of fishing shall terminate at the embouchures or outlets of rivers and creeks: the place of each embouchure or outlet shall be determined, in the manner elsewhere specified in this Convention, by the Commissioners or Umpire.

ARTICLE IV.

From Rock Point in the Bay of Islands to Cape Ray, Great Britain shall have the unre-

Cap Raye, excepté sur les cinq points ci-dessus mentionnés; mais les sujets Français auront l'usage exclusif du rivage pour les besoins de leur pêche pendant la dite saison, depuis le Cap Normand jusqu'à la Pointe Rock dans la Baie des Isles (au nord de la Rivière Humber), par 49° 5′ de latitude environ, en outre du rivage des hâvres réservés.

ARTICLE III.

Les sujets Français auront le droit, concurremment avec les sujets Anglais, de pêcher sur les côtes du Labrador depuis Blanc Sablon jusqu'au Cap Charles, et sur celles de Belle-île du Nord. Ils auront la faculté de sêcher ou préparer le poisson sur toute partie des côtes de Belle-île non occupée au moment où cette Convention deviendra effective. Toutefois, le Gouvernement Britannique garde le droit d'élever sur ces points des constructions militaires ou publiques; et, si quelqu'établissement, ayant pour objet une habitation permanente, vient à être fondé ultérieurement sur une partie quelconque des côtes de l'île, le droit des sujets Français à sêcher et préparer le poisson à cet endroit cessera, moyennant que le Commandant de la station Française ait été prévenu une saison d'avance de cet établissement.

Le dit droit de pêche en concurrence des sujets Français s'arrêtera aux embouchures ou issues des rivières et criques: la position de chaque embouchure ou issue sera déterminée, comme il est spécifié dans une autre partie de cette Convention, par les Commissaires ou Arbitre.

ARTICLE IV.

Depuis la Pointe Rock dans la Baie des Iles, jusqu'au Cap Raye, la Grande Bretagne aura exclu-

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stricted and exclusive use of the shore, except at the points above named in Article I, and within the land limits assigned for those points (Article X).

ARTICLE V.

French subjects shall have the right of purchasing bait, both herring and caplin, throughout the south coast of Newfoundland, including for this purpose the French Islands of St. Pierre and Miquelon, at sea or on shore, on equal terms with British subjects, without any restriction on the practice of such fishery by British subjects, and without any duty or restriction being imposed either on British or French subjects in respect of such traffic, or upon the export of such bait, on the part of Great Britain or of the Colony.

Should any circumstances whatever restrict, in a notorious manner previously established to the satisfaction of both the British and French naval Commanders on the station, during two seasons, consecutive or not, the said supply by purchase, French subjects shall have the right to fish for bait on the portion of the south coast of Newfoundland comprised between Cape St. Mary and Cape La Hune, during the French fishery seasons; French fishermen not being allowed to use any other nets than those employed for this kind of fishery: but this right shall cease as soon as the causes of the deficient supply shall have disappeared.

ARTICLE VI.

The lateral boundaries of the French rights of fishing toward the sea shall be as follows:—

At Cape Ray, a straight line drawn thence due west-south-west;

sivement et sans restriction l'usage du rivage, excepté sur les points mentionnés en l'Article I, et dans les limites de terre assignées à ces points (Article X).

ARTICLE V.

Les sujets Français auront le droit d'acheter l'appât, hareng et capelan, sur toute la côte sud de Terre-Neuve, en y comprenant à cet effet les Iles Françaises de St. Pierre et Miquelon, en mer ou à terre, sur le même pied que les sujets Anglais, sans que la Grande Bretagne ou la Colonie puisse imposer aux sujets Anglais aucune restriction dans la pratique de cette pêche; non plus qu'imposer aux sujets Anglais ou Français aucun droit ou restriction à l'occasion de cette transaction, ou sur l'exportation du dit appât.

Si des circonstances quelconques venaient à restreindre d'une manière notoire, et préalablement constatée à la satisfaction des Commandants des stations Anglaise et Française, pendant deux saisons, consécutives ou non, le dit approvisionnement par voie d'achat, les sujets Français auraient le droit de pêcher l'appât sur la partie de la côte sud de Terre-Neuve comprise entre le Cap St. Mary et le Cap La Hune, durant les saisons de pêche Française; ils ne pourraient dans ce cas faire usage d'aucun autre filet que ceux employés pour ce genre de pêche, et leur droit cesserait aussitôt que les causes de déficit dans l'approvisionnement par achat auraient disparu.

ARTICLE VI.

Les limites latérales de mer des droits de pêche Français, seront les suivantes:—

Au Cap Raye, une ligne droite menée dans l'ouest-sud-ouest vrai;

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At Cape Norman, a straight line thence due north;

At Cape St. John's, as may be defined by the Commissioners or Umpire on the basis of existing agreements and practice;

At Cape Charles, a straight line thence due east;

At Blanc Sablon, a line as nearly perpendicular to the general direction of the coast as may be, the precise line to be determined by the Commissioners or Umpire.

ARTICLE VII.

From Cape St. John to Rock Point in the Bay of Islands, the French right of fishing shall extend up all rivers or creeks as high as the salt water. From Rock Point to Cape Ray the right shall be limited to half a marine mile above the embouchure or outlet of each river or creek.

The point hereby limited for each river or creek from Cape St. John to Rock Point, and from Rock Point to Cape Ray, shall be settled in the manner elsewhere provided for by the Commissioners or Umpire.

ARTICLE VIII.

The French season of fishery on the coast of Newfoundland, Labrador, and North Belleisle, shall extend from the fifth of April to the fifth of October.

ARTICLE IX.

The naval officers of the French Government shall be entitled to enforce the said French exclusive rights of fishing, as defined in Article I, by expulsion of vessels or boats attempting concurrent fishing, in the case of there being no British cruizing-vessel in sight,

Au Cap Normand, une ligne droite menée dans le nord vrai;

Au Cap St. Jean, selon qu'il en sera décidé par les Commissaires ou Arbitre, sur la base de l'accord et de la pratique actuels;

Au Cap Charles, une ligne droite menée dans l'est vrai;

Au Blanc Sablon, une ligne aussi perpendiculaire à la direction générale de la côte que pourront la déterminer les Commissaires ou Arbitre.

ARTICLE VII.

Depuis le Cap St. Jean jusqu'à la Pointe Rock dans la Baie des Iles, le droit de pêche des Français s'étendra dans l'intérieur de toutes les rivières et criques, aussi loin que la salure des eaux. Depuis la Pointe Rock jusqu'au Cap Raye, ce droit sera limité à un demi-mille marin au-dessus de l'embouchure ou issue de chaque rivière ou crique.

Le point-limite pour chaque rivière ou crique depuis le Cap St. Jean jusqu'à la Pointe Rock, et depuis la Pointe Rock, jusqu'au Cap Raye, sera déterminé, comme il est spécifié ailleurs, par les Commissaires ou Arbitre.

ARTICLE VIII.

La saison de pêche Française sur les côtes de Terre-Neuve, du Labrador, et de Belle-île du Nord, s'étendra du cinq Avril au cinq Octobre.

ARTICLE IX.

Les officiers de marine du Gouvernement Français seront fondés à mettre en vigueur les droits exclusifs de pêche des sujets Français, tels qu'ils sont définis par l'Article I, en expulsant les navires ou bateaux qui tenteraient de pêcher en concurrence, toutes

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or made known to be present, within a distance of five marine miles.

Article X.

The strand reserved for French exclusive use for fishery purposes shall extend to one-third of an English mile inland from high-water mark, from Rock Point to Bonne Bay, inclusive, and at the four reserved harbours south of Bonne Bay; and from Bonne Bay to Cape St. John, to half an English mile inland from high-water mark.

The land lateral boundaries of the reserved harbours shall be settled by the Commissioners or Umpire, in accordance with the existing practice.

The strand shall be laterally bounded, where it reaches the banks of rivers and creeks, by straight lines drawn perpendicularly to the direction of the said rivers and creeks at the place where the French right of fishing ceases, to be determined as to each river or creek, in the manner elsewhere specified, by the Commissioners or Umpire.

Article XI.

No British buildings or enclosures shall be erected, or maintained, on the strand reserved for French exclusive use, except for the purposes of military defence or of the public administration (in which case due notice of the intended erection thereof shall be first given to the French Government); but such existing buildings or enclosures as have stood and been in occupation upon this strand, without objection on the part of the French Government, for a period of five seasons pre-

les fois qu'il n'y aura pas, dans un rayon de cinq milles marins, de croiseur Anglais en vue, ou dont la présence ait été notifiée.

Article X.

Le rivage réservé à l'usage exclusif des Français pour les besoins de leur pêche s'étendra jusqu'à un tiers de mille Anglais dans l'intérieur à partir de la marque de haute mer, entre la Pointe Rock et Bonne Baie inclusivement, ainsi que sur les quatre hâvres réservés situés au sud de Bonne Baie; entre Bonne Baie et le Cap St. Jean, il s'étendra jusqu'à un demi-mille Anglais à partir de la marque de haute mer.

Les limites latérales de terre des hâvres réservés seront déterminées par les Commissaires ou Arbitre, conformément aux usages de la pratique existante.

A la rencontre des bords des rivières et criques, le rivage sera limité latéralement par les lignes droites menées perpendiculairement à la direction des dites rivières ou criques, dans l'endroit où cesse le droit de pêche des Français; cette limite sera déterminée pour chaque rivière ou crique, comme il est spécifié ailleurs, par les Commissaires ou Arbitre.

Article XI.

Aucun enclos ou construction Anglais ne pourra être fait, ni maintenu, sur le rivage réservé exclusivement aux Français, si ce n'est pour besoins de défense militaire ou d'administration publique, auquel cas un avis en due forme de l'intention d'élever ces ouvrages sera préalablement donné au Gouvernement Français. Si cependant, à la date de la présente Convention, il existait sur le dit rivage des constructions ou enclos occupés depuis cinq saisons, sans objection de la part du Gouverne-

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ceding the date of this present Convention, shall not be liable to be removed without equitable compensation to the owners from the French Government, to be agreed on between the Naval Commanders of Great Britain and France on the station, or their respective delegates.

The French Naval Officers or other delegates duly nominated for this purpose by the French officer commanding-in-chief on the station, shall be entitled to take such measures as occasion may require, to put the French fishermen in possession of any portion of the strand, of which their exclusive use for fishery purposes is recognised by this present Convention, in case of there being no British police establishment, cruizing-vessel, or other recognized authority within a distance of five English miles.

Such measures may include the removal of buildings or enclosures, in conformity with the above stipulations, fifteen days' notice of any such intended removal having been given to any such British authority as aforesaid, if known to be within twenty English miles. Should there be no such authority within that distance, then the French officer commanding-in-chief shall, on the earliest opportunity after any such removal shall have taken place, report the same to the English officer commanding-in-chief.

ment Français, ils ne pourraient être déplacés sans qu'une indemnité équitable, concertée entre les Commandants-en-chef des stations Anglaise et Française, ou leurs délégués respectifs, fût accordée aux propriétaires par le Gouvernement Français.

Les officiers de la Marine Française ou autres délégués dûment nommés à cet effet par le Commandant-en-chef de la station Française, seront fondés à prendre telles mesures que les circonstances exigeront pour mettre les pêcheurs Français en possession de toute partie du rivage, dont l'usage leur est exclusivement reconnu par cette Convention pour les besoins de la pêche, toutes les fois qu'il n'y aura pas d'établissement de police Anglais, de croiseur, ou d'autre autorité reconnue dans un rayon de cinq milles Anglais.

Ces mesures comprennent le droit de déplacer les constructions ou enclos, conformément aux stipulations qui précèdent, pourvu qu'un avis de l'intention d'effectuer ces déplacements ait été donné quinze jours d'avance à toute autorité Anglaise désignée ci-dessur, s'il en est connu d'établir dans un rayon de vingt milles Anglais. S'il n'existe pas d'autorité Anglaise dans ces limites, le Commandant-en-chef de la station Française informera par la plus prochaine occasion le Commandant-en-chef de la station Anglaise des déplacements qui auront pu être opérés.

Article XII.

No French buildings or inclosures shall be erected, or maintained, for fishery or other purposes, between Cape St. John and Rock Point beyond the limits hereby recognised as those of the French right to the use of the strand. And it shall be lawful for

Article XII.

Aucun enclos ou construction Français ne pourra être fait, ni maintenu, pour besoins de pêche ou autres, entre le Cap St. Jean et la Pointe Rock, en dehors des limites reconnues par cette Convention comme celles du droit des Français sur le rivage. Il sera

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the British or Colonial Government to remove buildings and erections made beyond the said limits by French subjects, fifteen days' notice of any such intended removal having been given to the officer of any French cruising vessel, or other authority appointed for this purpose by the French officer commanding-in-chief, if known to be within twenty English miles. Should there be no such authority known to be within that distance, then the Government (British or Colonial) so removing shall, on the earliest opportunity after such removal shall have taken place, report the same to the French officer commanding-in-chief.

But such buildings or inclosures as have stood and been in occupation beyond the said limits, without objection on the part of the British Government, for a period of five seasons preceding the date of this present Convention, shall not be liable to be removed without equitable compensation to the owners from the British Government, to be agreed on between the Naval Commanders of Great Britain and France on the station, or their respective delegates.

légal de la part du Gouvernement Britannique ou Colonial de déplacer tout ouvrage ou construction élevé en dehors des dites limites par les sujets Français, pourvu qu'un avis de l'intention d'effectuer ces déplacements ait été donné quinze jours d'avance aux croiseurs Français, ou à toute autre autorité préposée à cet effet par le Commandant-en-chef de la station Française, s'il en est connu d'existante dans un rayon de vingt milles Anglais. S'il n'y a pas d'autorité Française dans ces limites, celui des deux Gouvernements (Britannique ou Colonial) qui aura opéré ces déplacements, en informera par la plus prochaine occasion le Commandant-en-chef de la station Française.

Si cependant, à la date de la présente Convention, il existait en dehors du rivage des constructions ou enclos occupés depuis cinq saisons, sans objection de la part du Gouvernement Britannique, ils ne pourraient être déplacés sans qu'une indemnité équitable, concertée entre les Commandants des stations Anglaise et Française, ou leurs délégués respectifs, fut accordée aux propriétaires par le Gouvernement Britannique.

Article XIII.

If any building or erection, British or French, not in conformity with the stipulations of this present Convention, shall at any time have stood and been in occupation undisturbed by the French or British Governments respectively for five seasons, it shall not be removed without six months' notice to the occupier.

Article XIII.

Si une construction ou un ouvrage quelconque, Anglais ou Français, élevé en opposition avec les stipulations de la présente Convention, est, à quelqu' époque que ce soit, resté occupé sans objection de la part du Gouvernement Français ou Anglais respectivement, pendant une période de cinq saisons, le dit ouvrage ou construction ne pourra être déplacé avant un terme de six mois après notification à l'occupant.

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Article XIV.

The British Government shall give the most positive orders to prevent injury to the French boats and fishery works during the winter; and in order to facilitate the apprehension of offenders in this respect, the French Government shall be allowed to employ British or French subjects for the custody of such boats and works, whether in the summer or winter, not to exceed in number three persons within any mile of coast. Such persons shall be subject in all respects to the local law of Newfoundland.

Article XV.

French subjects shall be at liberty to use on the strand reserved as aforesaid to their exclusive use for fishery purposes, any material and instruments they may think proper for their fishery erections; such erections and instruments being made and adapted for the drying and curing, or other preparation of fish, and for those purposes only.

Article XVI.

The privilege of French subjects to cut wood for the repair of their fishery erections and fishing vessels, from Cape St. John to Rock Point, may be exercised as far as required for the purpose, but not on private land without the consent of the occupier.

With respect to the four reserved harbours between Rock Point and Cape Ray, the same privilege shall be exercised on the mainland or elsewhere, within a radius of three marine miles from the centre of each harbour, such centre to be determined by the Commissioners or Umpire, as elsewhere specified.

Article XIV.

Le Gouvernement Britannique donnera les ordres les plus positifs pour empêcher qu'il ne soit fait aucun dommage aux bâteaux et établissements de pêche Français pendant l'hiver; et afin de rendre plus facile l'appréhension des délinquants, le Gouvernement Français pourra employer à la garde des dits bâteaux et établissements, en été ou en hiver, des sujets Anglais ou Français, à raison de trois au plus par mille de côte. Ces gardiens seront à tous égards soumis à la loi locale de Terre-Neuve.

Article XV.

Les sujets Français auront la faculté de se servir de tels matériaux et instruments qu'ils jugeront convenables pour leurs établissements de pêche sur le rivage réservé dans ce but, comme il a été dit, à leur usage exclusif. Ces établissements et instruments devront être construits et employés uniquement pour sêcher, préparer, ou manipuler le poisson d'une façon quelconque.

Article XVI.

Le privilège des sujets Français de couper des bois pour la réparation de leurs établissements de pêche et navires pêcheurs pourra s'exercer, entre le Cap St. Jean et la Pointe Rock, aussi loin qu'il sera jugé nécessaire, mais pas sur les terrains particuliers sans le consentement de l'occupant.

En ce qui regarde les quatre hâvres réservés compris entre la Pointe Rock et le Cape Raye, le même privilège s'exercera sur la grande terre ou ailleurs, dans un rayon de trois milles marins autour du centre de chaque hâvre: ce centre sera déterminé par les Commissaires ou Arbitre, comme il est ailleurs spécifié.

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ARTICLE XVII.

The provisions of the present Convention shall apply to the islands adjacent to the coasts mentioned, as well as to the coasts themselves, except where otherwise specified. The Islands of Groais and South Belleisle shall be regarded as adjacent to the nearest coast.

ARTICLE XVII.

Les stipulations de la présente Convention s'appliqueront aux îles adjacentes aux côtes mentionnées, aussi bien qu'aux côtes elles-mêmes, excepté sur les points où il en est disposé autrement. Les Iles de Groais et de Belle-île du Sud seront considérées comme adjacentes à la côte la plus voisine.

ARTICLE XVIII.

In order to settle the various points left by this Convention to be decided by Commissioners or an Umpire, each of the two Governments shall, on the application of the other, at any time after the passing by the Imperial Parliament of Great Britain, and by the Provincial Legislature of Newfoundland, of the laws required to carry this Convention into operation, appoint a Commissioner, to enter immediately on his functions.

Whenever a case shall occur in which the said Commissioners may differ in opinion, they shall name some third person to act as an Arbitrator or Umpire therein. If they should not be able to agree in the choice of such a third person, they shall each name a person, and it shall be determined by lot which of the two persons so named shall be the Arbitrator or Umpire. In the event of the death, absence, or incapacity of either of the Commissioners, or of the Arbitrator or Umpire, or of their or his omitting, declining, or ceasing to act as such Commissioner, Arbitrator, or Umpire, another and different person shall be appointed or named in the manner hereinbefore specified to act as such Commissioner, Arbitrator, or Umpire in the place and stead of the person so originally appointed or named as aforesaid.

The said Commissioners or Umpire shall frame regulations for

ARTICLE XVIII.

Afin de régler les divers points laissés par cette Convention à la décision de Commissaires ou Arbitre, et lorsque les lois nécessaires pour rendre la Convention effective auront été votées par le Parlement Impérial de la Grande Bretagne et par la Législature Provinciale de Terre-Neuve, chacun des Gouvernements devra, sur la demande de l'autre, désigner un Commissaire, pour entrer immédiatement en fonctions.

Dans tous les cas où une divergence d'opinion pourra se produire entre les Commissaires, ils désigneront une personne tierce pour prononcer à titre d'Arbitre. S'ils ne tombent pas d'accord sur le choix de cette personne, chacun des Commissaires en nommera une, et celle des deux que le sort désignera sera l'Arbitre. En cas de mort, d'absence, ou d'incapacité de l'un des Commissaires ou de l'Arbitre, ou si l'un d'eux omet, refuse, ou cesse d'agir en sa qualité de Commissaire ou d'Arbitre, une autre personne sera nommée selon la forme indiquée ci-dessus pour agir en cette qualité, à la place de celui désigné antérieurement.

Dans le but de prévenir des collisions, les dits Commissaires

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the exercise of concurrent rights by the parties to this Convention, with a view to prevent collisions; such regulations to be approved by the respective Governments, and until so approved to be in force provisionally; but such regulations shall be subject to revision, with the consent of both Governments.

ARTICLE XIX.

All stipulations of former Treaties shall remain in force so far as they are not superseded or modified by this present Convention.

ARTICLE XX.

The present Convention shall come into operation as soon as the laws required to carry it into effect shall have been passed by the Imperial Parliament of Great Britain, and by the Provincial Legislature of Newfoundland: Her Britannic Majesty hereby engaging to use her best endeavours to procure the passing of such laws in sufficient time to enable Her to bring the Convention into operation on or before the 1st of January, 1858.

ARTICLE XXI.

The present Convention shall be ratified, and the ratifications shall be exchanged at London in fifteen days, or sooner if possible.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at London, the fourteenth day of January, in the year of our Lord one thousand eight hundred and fifty-seven.

[L. S.] CLARENDON.
[L. S.] HENRY LABOUCHERE.
[L. S.] F. DE PERSIGNY.

ou Arbitre dresseront des réglements pour l'exercice des droits de pêche en concurrence attribués aux parties de cette Convention. Ces réglements devront être approuvés par les Gouvernements respectifs, et mis en vigueur provisoirement en attendant cette approbation; mais ils pourront être révisés avec le consentement des deux Gouvernements.

ARTICLE XIX.

Toutes les stipulations des Traités antérieurs restent en vigueur en ce qui n'est pas annulé ou modifié par la présente Convention.

ARTICLE XX.

La présente Convention sera mise en pratique aussitôt que lois nécessaires pour la rendre effective auront été votées par le Parlement Impérial de la Grande Bretagne, et par la Législature Provinciale de Terre-Neuve; et Sa Majesté Britannique s'engage par la présente Convention à user de tous ses efforts afin de procurer le vote des dites lois en temps convenable pour mettre la dite Convention en pratique le 1er Janvier, 1858, ou auparavant.

ARTICLE XXI.

La présente Convention sera ratifiée, et les ratifications en seront échangées à Londres dans le délai de quinze jours, ou plus tôt si faire se peut.

En foi de quoi, les Plénipotentiaires respectifs l'ont signée, y ont apposé le cachet de leurs armes.

Fait à Londres, le quatorze Janvier, l'an de grace mil huit cent cinquante-sept.

[L. S.] CLARENDON.
[L. S.] HENRY LABOUCHERE.
[L. S.] F. DE PERSIGNY.

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ARRANGEMENT OF 14TH NOVEMBER, 1885.[a]

ARRANGEMENT.

The undersigned Commissioners, who have been appointed by the Governments of Great Britain and France in order to find means, without touching the treaties at present in force, which it is not their duty either to modify or to interpret, of preventing and regulating disputes relative to the exercise of the fishery on the coasts of Newfoundland, have framed in concert the following regulations, subject to the approval of their respective Governments:

ARTICLE 1.

The Government of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland engages to comply with the following regulations for securing to French fishermen, in execution of the treaties in force, and particularly of the Declaration of 1783, the free exercise of their industry on the coasts of Newfoundland without any interference or obstruction whatever on the part of British subjects.

ARTICLE 2.

The Government of the French Republic engages, on its part, in exchange for the security accorded to French fishermen by the application of the regulations contained in the present arrangement, not to raise any objections against the formation of establishments necessary for the development of every industry other than that of the fisheries on those portions of

ARRANGEMENT.

Les Commissaires soussignés, délégués par les Gouvernements de Grande Bretagne et de France, à l'effet de rechercher, en dehors des traités actuellement en vigueur qu'ils n'avaient mission ni de modifier ni d'interprèter, les moyens de prévenir et de règler les contestations relatives à l'exercice de la pêche, sur les côtes de Terre Neuve, ont arrêté d'un commun accord, sous réserve de l'approbation de leurs Gouvernements respectifs, les dispositions suivantes:

ARTICLE 1er.

Le Gouvernement de Sa Majesté la Reine du Royaume Uni de la Grande Bretagne et d'Irlande s'engage à se conformer aux dispositions ci après pour assurer aux pécheurs français, en exécution des traités en vigueur et particulièrement de la Déclaration de 1783, le libre exercice de leur industrie, sur les côtes de Terre Neuve sans gène ou obstacle quelconque de la part des sujets Britanniques.

ARTICLE 2.

Le Gouvernement de la République Française s'engage, de son côté, en échange de la sécurité accordée aux pécheurs français par l'application des dispositions contenues dans le présent arrangement, à n'élever aucune protestation contre la création des établissements nécessaires au développement de toute industrie autre que celle des pêcheries, sur les

[a] This arrangement was not accepted by the government of Newfoundland, which passed resolutions declining to assent to it, on May 4, 1887.

An arrangement was signed April 26, 1884, identical with the arrangement of November 14, 1885, with the exception of Article III, which was not included in the 1884 arrangement.

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the coasts of Newfoundland comprised between Cape St. John and Cape Ray which are tinted in red on the map hereto annexed and which do not appear in the statement also annexed describing the portions of the coast to which the present paragraph does not apply.

It engages equally not to disturb the resident British subjects in respect of the establishments actually existing on those parts of the coast comprised between Cape Saint John and Cape Ray passing by the North, but no new ones will be established on those parts of the coast described in the statement mentioned in the preceding paragraph.

ARTICLE 3.

Notwithstanding the prohibition stipulated at the end of the second paragraph of the preceding Article, in the case where a mine should be discovered in the vicinity of any one of the parts of the coast comprised in the Statement annexed to the present Arrangement, the Government of the French Republic engages not to raise any objection to the persons interested enjoying for the working of such mine facilities compatible with the free exercise of the French fisheries.

With this object a wharf can be constructed on a point of the coast to be specified by common agreement between the Commanders of the cruizers of the two nations.

The constructions necessary for the working of the mine, such as dwelling-houses, workshops, warehouses, &c., shall be erected on that part of the territory situated beyond the limits specified in the annexed Statement for the exercise of the French fisheries. They may be connected with the

parties de la côte de Terre Neuve comprise entre le Cap Saint Jean et le Cap Raye, qui sont teintées en rouge sur la carte ci-annexée et qui ne figurent pas dans l'État, également ci annexé, comprenant les portions de territoire auxquelles ne s'applique point le présent paragraphe.

Il s'engage également à ne pas inquiéter les sujects Anglais résidents, à l'égard des constructions actuellement établies sur le littoral compris entre le Cap Saint Jean et le Cap Raye, en passant par le Nord. Mais il n'en sera point établi de nouvelles sur les parties du littoral comprises dans l'état mentionné au paragraphe précédent.

ARTICLE 3.

Nonobstant l'interdiction stipulée à la fin du second paragraphe de l'article précédent, dans le cas où une mine serait découverte dans le voisinage d'une des parties du littoral comprises dans l'État annexé au présent Arrangement, le Gouvernement de la République Française s'engage à ne point s'opposer à ce que les intéressés jouissent, pour l'exploitation de la dite mine, des facilités compatibles avec le libre exercice de la pêche Française.

A cet effet un embarcadère (wharf) pourra être établi sur un point de la côte désigné, d'un commun accord, par les Commandants des croiseurs des deux pays.

Les constructions nécessaires à l'exploitation de la mine, telles que maisons d'habitation, ateliers, entrepôts, &c., seront élevées sur la partie du territoire située en dehors des limites fixées dans l'État ci-annexé pour l'exercice de la pêche Française. Elles seront reliées à l'embarcadère par une

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wharf by one single railroad of one or two lines.

In order to facilitate the operations of loading and unloading, shelters and storehouses may, nevertheless, be constructed on each side of the railroad for the provisional storage of minerals and mining plant on a space not exceeding 15 metres on each side of the railroad, such space to be inclosed by a hedge or some sort of inclosure.

No construction other than the wharf, the railway, and the shelters, and storehouses above mentioned, can, in conformity with the last stipulation of the second paragraph of the preceding Article, be erected on the part of the coast set aside for fishing in the limits fixed in the annexed Statement.

The stipulations of the present Article shall apply equally to the working of a mine within these limits on the condition that it shall have been mutually agreed upon previously by the Commanders of the cruizers of the two nations that the working of the mine shall not be of such a nature as to hinder the free exercise of the French fisheries.

ARTICLE 4.

It is understood that French citizens shall retain in full on all those parts of the coast, comprised between Cape Saint John and Cape Ray, the right as it is defined by treaty of fishing, of drying and curing their fish, &c. as well as of cutting wood in all parts except on enclosed property, necessary for fishing stages, huts, and fishing boats.

ARTICLE 5.

The superintendence and the police of the fisheries shall be ex-

seule et unique ligne de chemin de fer à une ou deux voies.

Afin de faciliter les opérations de chargement et de déchargement, des abris et des magasins pourront, néanmoins, être construits des deux côtés de la voie ferrée pour le dépôt provisoire du minerai et du matériel de la mine, sur un espace qui ne pourra excéder 15 mètres de chaque côté de la voie, le dit espace devant être entouré d'une haie ou clôture quelconque.

Aucun établissement autre que l'embarcadère, le chemin de fer, ainsi que les abris et magasins susmentionnés, ne pourra, conformément à la disposition finale du second paragraphe de l'article précédent, être créé sur la partie du littoral réservée à la pêche dans les limites fixées dans l'État ci-annexé.

Les dispositions du présent article s'appliqueront également à l'exploitation d'une mine en dedans de ces limites, à la condition qu'il ait été préalablement constaté, d'un commun accord, par les Commandants des croiseurs des deux pays, que l'exploitation de cette mine ne sera pas de nature à entraver le libre exercice de la pêche Française.

ARTICLE 4.

Il est entendu que les français conserveront dans sa plénitude sur toutes les parties de la côte comprise entre le Cap Saint Jean et le Cap Raye et tel qu'il est défini par les Traités, le droit de pêcher, sécher, préparer le poisson, &c., ainsi que celui de couper, partout ailleurs que dans les propriétés closes, le bois nécessaire pour leurs échafaudages, cabanes, et bâtiments de pêche.

ARTICLE 5.

La surveillance et la police de la pêche seront exercées par des

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ercised by the ships of war of the two countries in accordance with the conditions hereafter set forth, the commanders of these ships having sole authority and competency under these conditions in all matters relating to the fisheries, and the operations which result therefrom.

ARTICLE 6.

English and French fishing ships or boats shall be registered in accordance with the administrative regulations of the country to which they respectively belong, and shall bear distinctive marks in a visible manner, which will allow of their being easily recognized at a distance. The captains, masters, or persons in charge, must have with them documents establishing the nationality of their ships or boats.

ARTICLE 7.

The commanders of cruizers of each nation shall notify mutually to one another any infractions which may be committed by the ships or boats of the other nation, of the regulations set forth in the preceding article.

ARTICLE 8.

The cruizers of the two countries shall have authority to record all infractions of the treaties actually in force, and especially of the Declaration of 1783, according to the terms of which British subjects are not to "interrupt in any manner the fishery of the French by their competition during the temporary exercise of it which is granted to them upon the coasts of Newfoundland."

ARTICLE 9.

On a complaint being made by French fishermen or on a demand

bâtiments de la marine militaire des deux pays, dans les conditions ci-près déterminées, les commandants des croiseurs ayant seuls, dans ces conditions, autorité et compétence dans toutes les affaires concernant la pêche et les opérations qui en sont la conséquence.

ARTICLE 6.

Les navires ou bateaux de pêche anglais et français seront enregistrés, suivant les réglements administratifs du pays auquel ils appartiennent et devront porter, d'une manière apparente, des marques distinctives permettant de constater, à distance, leur identité. Les capitaines, maitres, ou patrons seront porteurs de documents justificatifs de la nationalité de leurs navires ou bateaux.

ARTICLE 7.

Les commandants des croiseurs de chaque nation se signaleront mutuellement les infractions aux règles établies par l'article précédent qui seraient commises par les navires ou bateaux de l'autre nation.

ARTICLE 8.

Les bâtiments crosieurs des deux pays seront compétents pour constater toutes les infractions aux traités actuellement en vigueur et notamment à la Déclaration de 1783, aux termes de laquelle les sujets britanniques ne doivent "troubler, en aucune manière, par "leur concurrence, la pêche des "français pendant l'exercice tem"poraire qui leur est accordé sur "les côtes de Terre Neuve."

ARTICLE 9.

Sur la plainte des pêcheurs français ou sur leur demande

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being made by them with a view to their being enabled to exercise their right of fishing, the commanders of the English cruizers shall oppose, and, in case of no English cruizer being in sight, the commanders of the French cruizers may oppose every fishing operation of British subjects which may interrupt the industry of such French fishermen; they shall remove the boats or ships causing the obstruction to such industry.

With this object the commanders of French cruizers may address to the offending parties the necessary warnings, and in case of resistance take their fishing implements in order to place them on shore or to give them up into the hands of the commanders of Her Britannic Majesty's cruizers.

In cases in which no interruption shall result to French fishermen, and in which neither a complaint nor a demand has been made to enable them to exercise without difficulty their right of fishing, the commanders of French cruizers shall not oppose the fishing operations of British subjects.

ARTICLE 10.

In cases in which residents on shore may interfere with or disturb by their acts the drying and the preparation of fish, and in general the various operations which are a consequence of the exercise of the French fishery on the coast of Newfoundland, a report verifying the damage caused shall be drawn up by the commanders of the cruizers of Her Britannic Majesty and in their absence by the commanders of the French cruizers.

In the latter case the report shall be admitted in evidence in the judicial proceedings to be

tendant à pouvoir user de leur droit de pêche, les commandants des bâtiments croiseurs Anglais s'opposeront, et s'il n'y a aucun croiseur Anglais en vue, les commandants des croiseurs français pourront s'opposer à toute opération de pêche des sujets Britanniques que gênerait l'industrie des dits pêcheurs français; ils éloigneront les bateaux ou navires qui seraient un obstacle à cette industrie.

A cet effet, les commandants des bâtiments croiseurs français, pourront adresser à la partie en cause les injonctions nécessaires, et prendre, en cas de résistance, les engins de pêche pour les déposer à terre ou les remettre entre les mains des commandants des croiseurs de sa Majesté Britannique.

Dans le cas où il n'en résulterait aucune gène pour les pêcheurs français, et où il n'y aurait ni plainte ni demande de leur part tendant à pouvoir user, sans difficulté, de leur droit de pêche, les commandants des croiseurs français ne s'opposeront pas à l'exercice de la pêche par les sujets Britanniques.

ARTICLE 10.

Dans le cas où des résidents gêneraient ou troubleraient à terre, par leurs actes, le séchage et la préparation du poisson et, en général les diverses opérations qui sont la conséquence de l'exercice de la pêche française sur la côte de Terre Neuve, un procès verbal de constatation du dommage causé sera dressé par les commandants des bâtiments croiseurs de Sa Majesté Britannique et, en leur absence, par les commandants des croiseurs français.

Dans ce dernier cas, le procès verbal fera foi, pour la justice à rendre, en leur qualité de Magis-

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taken thereon by the commanders of Her Majesty's cruizers in the exercise of their functions as justices of the peace.

ARTICLE 11.

If an offence is committed or damage caused, the commanders of cruizers of the nationality to which the offender belongs, and in their absence, the commanders of the cruizers of the nationality to which the plaintiff belongs, shall estimate the gravity of the facts brought to their knowledge, and shall record the damage sustained by the plaintiff.

They shall draw up, should occasion require it, in accordance with the forms in use in the countries of the two nations respectively, a report as to the verification of the facts such as it may result as well from the declarations of the interested parties as from the evidence taken in the matter.

This report shall be admitted in evidence in the judicial proceedings to be taken thereon so far as their powers extend by the commanders of the cruizers of the nationality to which the offending party belongs.

Should the matter appear to be of sufficient gravity to justify such a step, the commander of the cruizer of the nationality to which the plaintiff belongs, shall have the right if no cruizer of the nationality to which the offender belongs be in sight, to secure either the person of the offender or his boat in order to give them up into the hands of the commanders of the cruizers of the nationality to which they belong.

ARTICLE 12.

The commanders of British and French cruizers shall administer immediate justice within the

trats, par les commandants des croiseurs de Sa Majesté Britannique.

ARTICLE 11.

Si un délit est commis ou un dommage causé, les commandants des bâtiments croiseurs de la nationalité du délinquant et, en leur absence, les commandants des bâtiments croiseurs de la nationalité du plaignant apprécieront la gravité des faits parvenus à leur connaissance et constateront le dommage éprouvé par la partie plaignante.

Ils dresseront, s'il y a lieu, et suivant les formes usitées dans leur pays, procès verbal de la constatation des faits telle qu'elle résultera tant des déclarations des parties intéressées que des témoignages recueillis.

Ce procès verbal fera foi, pour la justice à rendre, dans les limites de leur compétence, par les commandants des croiseurs de la nationalité du délinquant.

Si le cas lui semble assez grave pour justifier cette mesure, le commandant du bâtiment croiseur de la nationalité du plaignant aura le droit, s'il n'y a en vue aucun croiseur de la nationalité du délinquant, de s'assurer soit de la personne du dit délinquant, soit de son bateau, pour les remettre entre les mains des commandants des bâtiments croiseurs de leur nationalité.

ARTICLE 12.

Les commandants des bâtiments croiseurs Anglais et Français devront, dans la limite de

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limits of their powers, with regard to the complaints brought to their notice either by the interested parties directly or through the commanders of the cruizers of the other nation.

ARTICLE 13.

Resistance to the directions or injunctions of commanders of cruizers charged with the police of the fisheries, or of those who act under their orders, shall, without taking into account the nationality of the cruizer, be considered as resistance to the competent authority for repressing the act complained of.

ARTICLE 14.

When the act alleged is not of a serious character but has nevertheless caused damage, the commanders of cruizers shall be at liberty, should the parties concerned agree to it, to arbitrate between them, and to fix the compensation to be paid.

ARTICLE 15.

The French Government abandons for its subjects the salmon fisheries in rivers, and only reserves a right to the salmon fishery in the sea and at the mouth of rivers up to the point where the water remains salt, but it is forbidden to place fixed barriers capable of impeding interior navigation or the circulation of the fish.

ARTICLE 16.

French fishermen shall be exempt from the payment of any duties on the importation into that part of the Island of Newfoundland comprised between

leur compétence, faire droit, d'urgence, aux plaintes dont ils seront saisis, soit directement par la partie intéressée, soit par l'entremise des commandants des croiseurs de l'autre nation.

ARTICLE 13.

La résistance aux prescriptions ou injonctions des commandants des bâtiments croiseurs chargés de la police de la pêche ou de ceux qui agissent d'après leurs ordres, sera, sans tenir compte de la nationalité du croiseur, considérée comme résistance envers l'autorité compétente pour réprimer le fait incriminé.

ARTICLE 14.

Lorsque le fait incriminé ne sera pas de nature grave, mais que, néanmoins, il aura occasionné des dommages, les commandants des bâtiments croiseurs pourront concilier les intéressés et fixer l'indemnité à payer, s'il y a consentement des parties en cause.

ARTICLE 15.

Le Gouvernement Français renonce, pour ses nationaux, à la pêche du saumon dans les cours d'eau et ne se réserve la pêche de ce poisson qu'en mer et à l'embouchure des rivières jusqu'au point où les eaux sont salées; mais il est interdit d'établir des barrages fixes pouvant empêcher la navigation intérieure ou la circulation du poisson.

ARTICLE 16.

Les pêcheurs français seront exempts de toute taxe pour l'introduction, dans la partie de l'Ile de Terre Neuve comprise entre le Cap Saint Jean et le Cap Raye,

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Cape Saint John and Cape Ray, passing by the North, of all articles, goods provisions, &c., which are necessary for the prosecution of their fishing industry, for their subsistence, and for their temporary establishment on the coast of this British possession.

They shall also be exempt on the same part of the coast from the payment of all light and port dues and other shipping dues.

en passant par le Nord, de tous objets, matières, vivres, &c., nécessaires à leur industrie, à leur subsistance et à leur établissement temporaire sur la côte de cette possission Britannique.

Ils seront également, dans cette même partie de l'Ile, affranchis de tout droit de phare, de port ou autre droit de navigation.

ARTICLE 17.

French fishermen shall have the right to purchase bait, both herring and capelin, on shore or at sea, on the shores of Newfoundland, free from all duty or restrictions, subsequent to the 5th of April in each year and up to the close of the fishing season.

ARTICLE 17.

Les pêcheurs français auront le droit d'acheter la boitte, hareng et capelan, à terre ou à la mer, dans les parages de Terre Neuve, sans droits ni entraves quelconques, postérieurement au cinquième jour d'Avril de chaque année et jusqu'à la fin de la saison de pêche.

ARTICLE 18.

The employment of French subjects in the proportion of one guardian with his family to each harbour is authorized for the guardianship of the French establishments out of the fishing season.

In the large harbours where the temporary fishing-rooms of the French are so distant from each other as to render it impracticable for one guardian to take care of all such establishments, the presence of a second guardian with his family shall be authorized.

ARTICLE 18.

L'emploi de sujets Français, à raison d'un gardien avec sa famille par port (harbour), est autorisé pour la garde des établissements Français en dehors de la saison de pêche.

Dans les ports (harbours) d'une grande étendue où les établissements temporaires des Français seront trop distants l'un de l'autre pour permettre à un seul gardien de surveiller les établissements, la présence d'un second gardien, avec sa famille, sera autorisée.

ARTICLE 19.

All fishing boats, all their small boats, all rigging, gear, nets, lines, buoys or other fishing implements whatsoever, found or picked up, shall, as soon as possible, be delivered to the competent authorities of the nation of the salvor. The articles saved shall be restored to the owners thereof or to

ARTICLE 19.

Tout bateau de pêche, tout canot, tout objet de'armement ou de gréement de bateau de pêche, tout filet, ligne, bouée, ou engin quelconque, qui aura été trouvé ou recueilli, devra, aussitôt que possible, être remis aux autorités compétentes de la nation du sauveteur. Les objets sauvés seront

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their representatives by means of the above-mentioned competent authorities, the interest of the salvors being previously guaranteed.

The indemnity to be paid to the salvors shall be fixed in accordance with the law of the respective countries in such matters.

rendus aux propriétaires ou à leurs représentants par les soins des dites autorités compétentes et sous réserve de la garantie préalable des droits de sauveteurs.

L'indemnité à payer aux sauveteurs sera fixée suivant la législation de leur pays.

ARTICLE 20.

The provisions of the present arrangement, with the exception of those contained in Articles 1, 2, and 18, shall be applicable solely for the time during which the treaties accord to the French the right of fishing and drying their fish.

In faith of which the undersigned Commissioners have drawn up the present arrangement, subject to the approval of their respective Governments, and have signed the same.

Done at Paris, in duplicate, the 14th of November 1885.

FRANCIS CLARE FORD.
EDMUND BURKE PENNELL.

ARTICLE 20.

Les dispositions du présent arrangement, à l'exception de celles des articles 1, 2, et 18, seront applicables uniquement pendant le temps durant lequel les traités accordent aux français le droit de pêcher et de sécher le poisson.

En foi de quoi, les Commissaires soussignés ont dressé le présent arrangement, sous réserve de l'approbation de leurs Gouvernements respectifs, et y ont apposé leur signature.

Fait à Paris, en double expédition, les 14 Novembre 1885.

CH. JAGERSCHMIDT.
T. BIGREL.

STATEMENT ANNEXED TO THE ARRANGEMENT OF THE 14TH NOVEMBER 1885.

WEST SIDE.

(From Cape Ray to Cape Norman.)

1. Cod Roy Island. On the main land opposite, that portion of the coast situated between the two perpendicular lines drawn from the extremities of the island in the general direction of the coast;

2. Red Island;

3. That portion of the coast situated between Cape Cormoran and the west point of Pic Denis Harbour in the Bay of Port à Port on the west;

CÔTE OUEST.

(Du Cap Raye au Cap Normand.)

1. L'Ile de Cod Roy. Sur la grande terre qui fait face, la partie de la côte comprise entre les deux perpendiculaires menées des extrémités de l'Ile sur la direction générale de la côte;

2. L'Ile Rouge;

3. La partie de la côte comprise entre le Cap Cormoran et la pointe ouest du Hâvre du Pic Denis dans la baie de l'ouest de Port à Port;

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4. The small islands situated in the Bay of Port à Port, together with those which close it on the north;

5. That portion of the coast situated between Bear Cove (L'Anse à l'Ours) and the foot of the mountain Blow-me-down;

6. Governor's Island, the islands of Guernsey, Tweed, the two Shags, the Pearl, and Green Island;

7. That portion of the coast which borders the Harbour des Roches;

8. Stearing Island and the adjacent coast from the latitude of the northern point of Stearing Island to the foot of a perpendicular line drawn down from Cape Pointu on the coast, following the sinuosities of the peninsula of Cow Head (La Tête de Vache);

9. That portion of the coast comprised between a point situated at a distance of three miles to the south of the mouth of the River Ponds and the latitude of the northern part of Savage Island following the sinuosities of the peninsula of Port au Choix;

10. All those islands situated within the Bay of St. John;

11. That portion of the coast situated between Castor Point (at the southern entrance of the bay) and the northern point of the entrance of Savage Cove (Anse aux Sauvages);

12. All those islands situated along that portion of the coast mentioned in the preceding paragraph (No. 11).

4. Les îlots situés dans la baie de Port à Port, ainsi que ceux qui la ferment au nord;

5. La partie de la côte comprise entre l'Anse à l'Ours (Bear Cove) et le pied de la montagne Blow-me-down;

6. L'Ile du Gouverneur, les Iles de Guernesey, Tweed, les deux Shag, la Perle et l'Ile Verte;

7. La partie de la côte autour du Hâvre des Roches;

8. L'Ile Stearing et la côte adjacente, depuis la latitude de la pointe nord de l'Ile Stearing jusqu'au pied de la perpendiculaire abaissée du Cap Pointu sur la côte, en contournant la presqu'île de la Tête de Vache;

9. La partie de la côte comprise entre un point situé à trois milles au sud de l'embouchure de la rivière Ponds et la latitude de la partie nord de l'Ile des Sauvages, en contournant la presqu'île de Port au Choix;

10. Toutes les îles situées dans la baie de Saint Jean;

11. La partie de la côte comprise entre la pointe des Castors (entrée sud de la baie) et la pointe nord de l'entrée de l'Anse aux Sauvages;

12. Toutes les îles qui se trouvent le long de la portion de côte mentionnée au paragraphe 11.

EAST SIDE.

(From Cape Norman to Cape St. John.)

1. That portion of the coast situated between the extremity of Shallow Bay and the foot of the

CÔTE EST.

(Du Cap Normand au Cap St. Jean.)

1. La partie de la côte comprise entre le fond de la baie Shallow et le pied de la colline sur

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hill on which the lighthouse is placed, as well as all those islands which border the west side of Pistolet Bay;

2. That portion of the coast situated between the mouth of Parker River in Pistolet Bay and Partridge Point, inclusive of the island of Quirpon and all the islands adjacent;

3. The entire circumference of the bays and of the shores situated between the northern entrance of Griquets Bay and the west point of the entrance of Outardes Harbour;

4. Those islands adjacent to that portion of the coast;

5. That portion of the coast situated between the west point of the entrance of Maiden Arm (Hâvre de la Tête de Mort) and a point situated to the south of Conche according to the latitude of the Point des Renards;

6. The group of Islands Fichot, St. Juliens, the southern part of Belle Isle south, up to the parallel of the southern point of Green Island, and all the little islands adjacent to the portion of coast described in paragraph No. 5;

7. The circumference of Boutitou Harbour;

8. That portion of the coast commencing from Aiguilette Point turning round the Bras de Bides as far as the western entrance of the Bras de Bides, inclusive of the islands adjacent;

9. That portion of the coast commencing from the west entrance of Canary Gulf, and, following the coast, terminating at the southern entrance of Hooping Harbour;

10. That portion of the coast following the sinuosities of the following bays—Fourché, Orange, Great and Little Calves;

11. That portion of the coast situated between Cape Partridge and the parallel of the southern

laquelle le phare est élevé, ainsi que toutes les îles qui bordent à l'ouest la Baie du Pistolet;

2. La partie de la côte comprise entre l'embouchure de la rivière Parker, dans la Baie du Pistolet, et la pointe Partridge, en comprenant l'Ile du Kirpon et toutes les îles adjacentes;

3. Tout le contour des baies et des plages comprises entre l'entrée nord de la Baie des Griquets et la pointe ouest de l'entrée du Hâvre aux Outardes;

4. Les îles adjacentes à cette portion de côte;

5. La partie de la côte comprise entre la pointe ouest de l'entrée du Hâvre de la Tête de Mort (Maiden Arm) et le point situé au sud de la Conche par la latitude de la pointe des Renards;

6. Le groupe des îles Fichot, St. Juliens, la partie méridionale de Belle-Ile du Sud jusqu'au parallèle de la pointe sud de l'Ile Verte, et tous les îlots adjacents à la portion de côte délimitée au paragraphe 5;

7. Le périmètre du Hâvre de Boutitou;

8. La partie de la côte partant de la pointe de l'Aiguillette, contournant le Bras de Bides, jusqu'à l'entrée ouest dudit Bras et comprenant toutes les îles adjacentes;

9. La partie de la côte commençant à l'entrée ouest du Gouffre des Canaries, et venant, en suivant la côte, se terminer à l'entrée sud de la Baie sans Fond (Hooping Harbour);

10. La partie de la côte suivant les sinuosités de chacune des baies—Fourché, Orange, Grandes et Petites Vaches;

11. La partie de la côte comprise entre le cap Partridge et le parallèle de la pointe sud du

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point of the group of islands of Pot d'Etain (Coachman's Cove);

12. That portion of the coast situated on the east side of the Bay of Pines, and stretching from the 50th degree of latitude to the north point of that part of the bay;

13. Those small islands situated on the coast between the harbour of Fleur de Lys and Cape St. John, with the exception of Horse Islands (Les Isles St. Barbe);

14. That portion of the coast following the sinuosities of Paquet Harbour;

15. That portion of the coast situated between Cape Cagnet on the west and the east entrance of the Harbour of Scie.

The prohibition to erect new establishments on those portions of the coast mentioned in the present statement shall be applicable to a distance inland of 500 yards with regard to paragraphs numbered 7, 8, and 9 on the west coast, and to a distance of 800 yards with regard to all the other paragraphs, following the sinuosities of the coast.

It is understood that the distances of 500 and 800 yards are to be reckoned from high-water mark.

Done at Paris, in duplicate, the 14th of November 1885.

FRANCIS CLARE FORD.
EDMUND BURKE PENNELL.

groupe des Iles du Pot d'Etain (Coachman's Cove);

12. La partie de la côte est de la Baie des Pins, s'étendant de la latitude de 50° jusqu'à l'extrémité nord de cette partie de la baie;

13. Les îlots adjacents à la côte, du Hâvre de la Fleur de Lys au Cap Saint Jean, non compris les Iles Sainte Barbe;

14. La partie de la côte contournant le Hâvre de Paquet;

15. La partie de la côte comprise entre le Cap Cagnet à l'ouest et l'entrée est du Hâvre de la Scie.

L'interdiction d'élever des constructions nouvelles sur les parties de la côte mentionnées au présent Etat s'appliquera sur une profondeur de 500 yards pour les Nos. 7, 8, et 9 de la côte ouest, et sur une profondeur de 800 yards pour tous les autres paragraphes, en suivant les sinuosités de la côte.

Il est entendu que les distances de 500 et de 800 yards sont comptées à partir de la limite de la pleine mer.

Fait à Paris, en double expédition, le 14 Novembre 1885.

CH. JAGERSCHMIDT.
T. BIGREL.

MODUS VIVENDI OF 1890.

The Marquess of Salisbury to M. Waddington.

FOREIGN OFFICE, *March 10, 1890.*

M. L'AMBASSADEUR,

With reference to the verbal communications which have taken place as to the conditions on which the lobster fisheries in Newfoundland should be carried on during the ensuing season, I have the honor to transmit herewith the draft of a modus vivendi, and to state that her Majesty's Government are prepared to accept it.

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I shall be glad to learn whether your Excellency is authorized to assent to it on behalf of the Government of the French Republic.

I am, &c.,

SALISBURY.

M. WADDINGTON.

[Inclosure.]

DRAFT MODUS VIVENDI.

The questions of principle and of respective rights being entirely reserved on both sides, the British and French Governments agree that the status quo shall be maintained during the ensuing season on the following bases:

Without France or Great Britain demanding at once a new examination of the legality of the installation of British or French lobster factories on the coasts of Newfoundland, where the French enjoy rights of fishing conferred by the Treaties, it is understood that there shall be no modification in the positions ("emplacements") occupied by the establishments of the subjects of either country on the 1st July, 1889, except that a subject of either nation may remove any such establishment to any spot on which the Commanders of the two naval stations shall have previously agreed.

No lobster fisheries which were not in operation on the 1st July, 1889, shall be permitted, unless by the joint consent of the Commanders of the British and French naval stations.

In consideration of each new lobster fishery so permitted, it shall be open to the fishermen of the other country to establish a new lobster fishery on some spot to be similarly settled by joint agreement between the said Naval Commanders.

Whenever any case of competition in respect of lobster fishery arises between fishermen of either country, the commanders of the two naval stations shall proceed on the spot to a provisional delimitation of the lobster fishery grounds, having regard to the situations acquired by the two parties.

N. B.—It is well understood that this arrangement is quite provisional, and shall only hold good for the fishing season which is about to open.

M. Waddington to the Marquess of Salisburg.

(Received March 12.)

LONDRES, *le 11 Mars, 1890.*

M. LE MARQUIS,

Votre Seigneurie a bien voulu, en se référant aux communications verbales qui ont été échangées entre cette Ambassade et le Foreign Office, m'adresser un projet de modus vivendi destiné à régler les conditions dans lesquelles la pêche du homard aura à Terre-Neuve pendant la saison prochaine.

Vous me faites savoir en même temps que le texte de ce projet a reçu l'adhésion du Gouvernement de la Reine, et vous me demandez si, de mon côté, je suis autorisé à en accepter les termes au nom du Gouvernement de la République Française.

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Je m'empresse d'accuser réception de la communication de votre Seigneurie, et après avoir pris connaissance du document qui y était joint, et qui est conforme aux vues échangées de part et d'autre au cours des pourparlers susénoncés, j'ai l'honneur de lui faire connaître que je suis autorisé, dans ces conditions, à accepter pour mon Gouvernement, et en son nom, les arrangement consignés dans l'acte en question.

L'accord des deux Gouvernements étant ainsi constaté par la communication de votre Seigneurie et par la présente lettre, le projet de modus vivendi précité devient par suite exécutoire pour la saison prochaine, et ses dispositions seront, pendant cette période, la règle des parties pour ce qui concerne la pêche du homard à Terre-Neuve.

Veuillez, &c.,

WADDINGTON.

Le MARQUIS DE SALISBURY.

The Marquess of Salisbury to M. Waddington.

FOREIGN OFFICE, *March 13.*

M. L'AMBASSADEUR,

I have the honour to acknowledge the receipt of your Excellency's note of the 11th instant, informing me that the proposed arrangement in regard to the modus vivendi for the lobster fisheries in Newfoundland during the ensuing season is accepted by the French Government. I have lost no time in communicating this information to her Majesty's Secretary of State for the Colonies, and in requesting his Lordship to take all necessary steps for carrying the terms of the arrangement into execution.

I have, &c.,

SALISBURY.

M. WADDINGTON.

MODUS VIVENDI OF MARCH 11, 1891.

The Government of Her Britannic Majesty and the Government of the French Republic having resolved to submit to a Commission of Arbitration the solution of certain difficulties which have arisen on the portion of the coasts of Newfoundland comprised between Cape St. John and Cape Ray, passing by the north, have agreed upon the following provisions:—

1. The Commission of Arbitration shall judge and decide all the questions of principle which shall be submitted to it by either Government, or by their Delegates, concerning the catching

Le Gouvernement de Sa Majesté Britannique et le Gouvernement de le République Française ayant résolu de soumettre à une Commisssion Arbitrale la solution de certaines difficultés survenues sur la partie des côtes de Terre-Neuve comprise entre le Cap Saint-Jean et le Cap Ray, en passant par le nord, sont tombés d'accord sur les dispositions suivantes:—

1. La Commission Arbitrale jugera et tranchera toutes les questions de principe qui lui seront soumises par l'un ou l'autre Gouvernement, ou par leurs Délégués, concernant la pêche du

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and preparation of lobsters on the above mentioned portion of the coasts of Newfoundland.

2. The Two Governments engaged, in so far as each may be concerned, to execute the decisions of the Commission of Arbitration.

3. The modus vivendi of 1890 relative to the catching and preparation of lobsters is renewed purely and simply for the fishery season of 1891.

4. As soon as the questions relative to the catching and preparation of lobsters shall have been decided by the Commission, it may take cognizance of other subsidiary questions relative to the fisheries on the above mentioned portion of the coasts of Newfoundland, and upon the text of which the two Governments shall have previously come to an agreement.

5. The Commission of Arbitration shall be composed—

(1) Of three Specialists or Jurisconsults designated by common consent by the two Governments;

(2) Of two Delegates of each country, who shall be the authorized channels of cummunication between the two Governments and the other Arbitrators.

6. The Commission of Arbitration thus formed of seven members shall decide by majority of votes and without appeal.

7. It shall meet as soon as possible.

Done at London, the 11th day of March, 1891.

SALISBURY.
WADDINGTON.

homard et sa préparation sur la partie susdite des côtes de Terre-Neuve.

2. Les deux Gouvernements s'engagent, chacun en ce qui le concerne, à exécuter les décisions de la Commission Arbitrale.

3. Le modus vivendi de 1890 relatif à la pêche du homard et à sa préparation est renouvelé purement et simplement pour la saison de pêche de 1891.

4. Une fois que les questions relatives à la pêche du homard et à sa préparation auront été tranchées par la Commission, elle pourra être saisie d'autres questions subsidiaires relatives aux pêcheries de la partie susdite des côtes de Terre-Neuve, et sur le texte desquelles les deux Gouvernements seront préalablement tombés d'accord.

5. La Commission Arbitrale sera composée—

(1) De trois Spécialistes ou Jurisconsultes désignés d'un commun accord par les deux Gouvernements;

(2) De deux Délégués de chaque pays, qui seront les intermédiaires autorisés entre leurs Gouvernements et les autres Arbitres.

6. La Commission Arbitrale ainsi formée de sept membres statuera à la majorité des voix et sans appel.

7. Elle se réunira aussitôt que faire se pourra.

Fait à Londres, le 11 Mars, 1891.

SALISBURY
WADDINGTON.

TREATY OF APRIL 8, 1904.

[Signed at London, April 8, 1904.]

HIS Majesty the King of the United Kingdom of Great Britain and Ireland and of the British

SA Majesté le Roi du Royaume-Uni de la Grande-Bretagne et d'Irlande et des Territoires

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Dominions beyond the Seas, Emperor of India, and the President of the French Republic, having resolved to put an end, by a friendly Arrangement, to the difficulties which have arisen in Newfoundland, have decided to conclude a Convention to that effect, and have named as their respective Plenipotentiaries:

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, the Most Honourable Henry Charles Keith Petty-Fitzmaurice, Marquess of Lansdowne, His Majesty's Principal Secretary of State for Foreign Affairs; and

The President of the French Republic, his Excellency Monsieur Paul Cambon, Ambassador of the French Republic at the Court of His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India;

Who, after having communicated to each other their full powers, found in good and due form, have agreed as follows, subject to the approval of their respective Parliaments:—

ARTICLE I.

France renounces the privileges established to her advantage by Article XIII of the Treaty of Utrecht, and confirmed or modified by subsequent provisions.

ARTICLE II.

France retains for her citizens, on a footing of equality with British subjects, the right of fishing in the territorial waters on that portion of the coast of Newfoundland comprised between Cape St. John and Cape Ray, passing by

Britanniques au delà des Mers, Empereur des Indes, et le Président de la République Française, ayant résolu de mettre fin, par un arrangement amiable, aux difficultés survenues à Terre-Neuve, ont décidé de conclure une Convention à cet effet, et ont nommé pour leurs Plénipotentiaires respectifs:

Sa Majesté le Roi du Royaume-Uni de la Grande-Bretagne et d'Irlande et des Territoires Britanniques au delà des Mers, Empereur des Indes, le Très Honorable Henry Charles Keith Petty-Fitzmaurice, Marquis de Lansdowne, Principal Secrétaire d'État de Sa Majesté au Département des Affaires Étrangères; et

Le Président de la République Française, son Excellence Monsieur Paul Cambon, Ambassadeur de la République Française près Sa Majesté le Roi du Royaume-Uni de la Grande-Bretagne et d'Irlande et des Territoires Britanniques au delà des Mers, Empereur des Indes;

Lesquels, après s'être communiqué leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus de ce qui suit, sous réserve de l'approbation de leurs Parlements respectifs:—

ARTICLE I.

La France renonce aux privilèges établis à son profit par l'Article XIII du Traité d'Utrecht, et confirmés ou modifiés par des dispositions postérieures.

ARTICLE II.

La France conserve pour ses ressortissants, sur le pied d'égalité avec les sujets Britanniques, le droit de pêche dans les eaux territoriales sur la partie de la côte de Terre-Neuve comprise entre le Cap Saint-Jean et le Cap Raye

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the north; this right shall be exercised during the usual fishing season closing for all persons on the 20th October of each year.

The French may therefore fish there for every kind of fish, including bait and also shell fish. They may enter any port or harbour on the said coast and may there obtain supplies or bait and shelter on the same conditions as the inhabitants of Newfoundland, but they will remain subject to the local Regulations in force; they may also fish at the mouths of the rivers, but without going beyond a straight line drawn between the two extremities of the banks, where the river enters the sea.

They shall not make use of stake-nets or fixed engines without permission of the local authorities.

On the above-mentioned portion of the coast, British subjects and French citizens shall be subject alike to the laws and Regulations now in force, or which may hereafter be passed for the establishment of a close time in regard to any particular kind of fish, or for the improvement of the fisheries. Notice of any fresh laws or Regulations shall be given to the Government of the French Republic three months before they come into operation.

The policing of the fishing on the above-mentioned portion of the coast, and for prevention of illicit liquor traffic and smuggling of spirits, shall form the subject of Regulations drawn up in agreement by the two Governments.

ARTICLE III.

A pecuniary indemnity shall be awarded by His Britannic Ma-

en passant par le nord; ce droit s'exercera pendant la saison habituelle de pêche finissant pour tout le monde le 20 Octobre de chaque année.

Les Français pourront donc y pêcher toute espèce de poisson, y compris la boëtte, ainsi que les crustacés. Ils pourront entrer dans tout port ou havre de cette côte et s'y procurer des approvisionnements ou de la boëtte et s'y abriter dans les mêmes conditions que les habitants de Terre-Neuve, en restant soumis aux Règlements locaux en vigueur; ils pourront aussi pêcher à l'embouchure des rivières, sans toutefois pouvoir dépasser une ligne droite qui serait tirée de l'un à l'autre des points extrêmes du rivage entre lesquels la rivière se jette dans la mer.

Ils devront s'abstenir de faire usage d'engins de pêche fixes ("stake-nets and fixed engines") sans la permission des autorités locales.

Sur la partie de la côte mentionnée ci-dessus, les Anglais et les Français seront soumis sur le pied d'égalité aux Lois et Règlements actuellement en vigueur ou qui seraient édictés, dans la suite, pour la prohibition, pendant un temps déterminé, de la pêche de certains poissons ou pour l'amélioration des pêcheries. Il sera donné connaissance au Gouvernement de la République Française des Lois et Règlements nouveaux, trois mois avant l'époque où ceux-ci devront être appliqués.

La police de la pêche sur la partie de la côte susmentionnée, ainsi que celle du trafic illicite des liqueurs et de la contrebande des alcools, feront l'objet d'un Règlement établi d'accord entre les deux Gouvernements.

ARTICLE III.

Une indemnité pécuniaire sera allouée par le Gouvernement de

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jesty's Government to the French citizens engaged in fishing or the preparation of fish on the "Treaty Shore," who are obliged, either to abandon the establishments they possess there, or to give up their occupation, in consequence of the modification introduced by the present Convention into the existing state of affairs.

This indemnity cannot be claimed by the parties interested unless they have been engaged in their business prior to the closing of the fishing season of 1903.

Claims for indemnity shall be submitted to an Arbitral Tribunal, composed of an officer of each nation, and, in the event of disagreement, of an Umpire appointed in accordance with the procedure laid down by Article XXXII of The Hague Convention. The details regulating the constitution of the Tribunal and the conditions of the inquiries to be instituted for the purpose of substantiating the claims, shall form the subject of a special Agreement between the two Governments.

Sa Majesté Britannique aux citoyens Français se livrant à la pêche ou à la préparation du poisson sur le "Treaty Shore," qui seront obligés soit d'abandonner les établissements qu'ils y possèdent, soit de renoncer à leur industrie, par suite de la modification apportée par la présente Convention à l'état de choses actuel.

Cette indemnité ne pourra être réclamée par les intéressés que s'ils ont exercé leur profession antérieurement à la clôture de la saison de pêche de 1903.

Les demandes d'indemnité seront soumises à un Tribunal Arbitral composé d'un officier de chaque nation, et en cas de désaccord d'un sur-arbitre désigné suivant la procédure instituée par l'Article XXXII de la Convention de La Haye. Les détails réglant la constitution du Tribunal et les conditions des enquêtes à ouvrir pour mettre les demandes en état feront l'objet d'un Arrangement spécial entre les deux Gouvernements.

ARTICLE IV.

His Britannic Majesty's Government, recognizing that, in addition to the indemnity referred to in the preceding Article, some territorial compensation is due to France in return for the surrender of her privilege in that part of the Island of Newfoundland referred to in Article II, agree with the Government of the French Republic to the provisions embodied in the following Articles:—

ARTICLE IV.

Le Gouvernement de Sa Majesté Britannique, reconnaissant qu'en outre de l'indemnité mentionnée dans l'Article précédent, une compensation territoriale est due à la France pour l'abandon de son privilège sur la partie de l'Ile de Terre Neuve visée à l'Article II, convient avec le Gouvernement de la République Française des dispositions qui font l'objet des Articles suivants:—

ARTICLE V.

The present frontier between Senegambia and the English Colony of the Gambia shall be modified so as to give to France

ARTICLE V.

La frontière existant entre la Sénégambie et la Colonie Anglaise de la Gambie sera modifiée de manière à assurer à la France

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Yarbutenda and the lands and landing places belonging to that locality.

In the event of the river not being open to maritime navigation up to that point, access shall be assured to the French Government at a point lower down on the River Gambia, which shall be recognized by mutual agreement as being accessible to merchant ships engaged in maritime navigation.

The conditions which shall govern transit on the River Gambia and its tributaries, as well as the method of access to the point that may be reserved to France in accordance with the preceding paragraph, shall form the subject of future agreement between the two Governments.

In any case, it is understood that these conditions shall be at least as favourable as those of the system instituted by application of the General Act of the African Conference of the 26th February, 1885, and of the Anglo-French Convention of the 14th June, 1898, to the English portion of the basin of the Niger.

ARTICLE VI.

The group known as the Iles de Los, and situated opposite Konakry, is ceded by His Britannic Majesty to France.

ARTICLE VII.

Persons born in the territories ceded to France by Articles V and VI of the present Convention may retain British nationality by means of an individual declaration to that effect, to be made before the proper authorities by themselves, or, in the case of children under age, by their parents or guardians.

The period within which the declaration of option referred to

la possession de Yarboutenda et des terrains et points d'atterissement appartenant à cette localité.

Au cas où la navigation maritime ne pourrait s'exercer jusque-là, un accès sera assuré en aval au Gouvernement Français sur un point de la Rivière Gambie qui sera reconnu d'un commun accord comme étant accessible aux bâtiments marchands se livrant à la navigation maritime.

Les conditions dans lesquelles seront réglés le transit sur la Rivière Gambie et ses affluents, ainsi que le mode d'accès au point qui viendrait à être réservé à la France, en exécution du paragraphe précédent, feront l'objet d'arrangements à concerter entre les deux Gouvernements.

Il est, dans tous les cas, entendu que ces conditions seront au moins aussi favorables que celles du régime institué par application de l'Acte Général de la Conférence Africaine du 26 Février, 1885, et de la Convention Franco-Anglaise du 14 Juin, 1898, dans la partie Anglaise du bassin du Niger.

ARTICLE VI.

Le groupe désigné sous le nom d'Iles de Los, et situé en face de Konakry, est cédé par Sa Majesté Britannique à la France.

ARTICLE VII.

Les personnes nées sur les territoires cédés à la France par les Articles V et VI de la présente Convention pourront conserver la nationalité Britannique moyennant une déclaration individuelle faite à cet effet devant l'autorité compétente par elles-mêmes, ou, dans le cas d'enfants mineurs, par leurs parents ou tuteurs.

Le délai dans lequel devra se faire la déclaration d'option pré-

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in the preceding paragraph must be made, shall be one year, dating from the day on which French authority shall be established over the territory in which the persons in question have been born.

Native laws and customs now existing will, as far as possible, remain undisturbed.

In the Iles de Los, for a period of thirty years from the date of exchange of the ratifications of the present Convention, British fishermen shall enjoy the same rights as French fishermen with regard to anchorage in all weathers, to taking in provisions and water, to making repairs, to transshipment of goods, to the sale of fish, and to the landing and drying of nets, provided always that they observe the conditions laid down in the French Laws and Regulations which may be in force there.

vue au paragraphe précédent sera d'un an à dater du jour de l'installation de l'autorité Française sur le territoire où seront nées les dites personnes.

Les lois et coutumes indigènes actuellement en vigueur seront respectées autant que possible.

Aux Iles de Los, et pendant une période de trente années à partir de l'échange des ratifications de la présente Convention, les pêcheurs Anglais bénéficieront en ce qui concerne le droit d'ancrage par tous les temps, d'approvisionnement et d'aiguade, de réparation, de transbordement de marchandises, de vente de poisson, de descente à terre et de séchage des filets, du même régime que les pêcheurs Français, sous réserve, toutefois, par eux de l'observation des prescriptions édictées dans les Lois et Règlements Français qui y seront en vigueur.

Article VIII.

To the east of the Niger the following line shall be substituted for the boundary fixed between the French and British possessions by the Convention of the 14th June, 1898, subject to the modifications which may result from the stipulations introduced in the final paragraph of the present Article.

Starting from the point on the left bank of the Niger laid down in Article III of the Convention of the 14th June, 1898, that is to say, the median line of the Dallul Mauri, the frontier shall be drawn along this median line until it meets the circumference of a circle drawn from the town of Sokoto as a centre, with a radius of 160,932 mètres (100 miles). Thence it shall follow the northern arc of this circle to a point

Article VIII.

A l'est du Niger, et sous réserve des modifications que pourront y comporter les stipulations insérées au dernier paragraphe du présent Article, le tracé suivant sera substitué à la délimitation établie entre les possessions Françaises et Anglaises par la Convention du 14 Juin, 1898:—

Partant du point sur la rive gauche du Niger indiqué à l'Article III de la Convention du 14 Juin, 1898, c'est-à-dire, la ligne médiane du Dallul-Maouri, la frontière suivra cette ligne médiane jusqu'à sa rencontre avec la circonférence d'un cercle décrit du centre de la ville de Sokoto avec un rayon de 160,932 mètres (100 milles). De ce point, elle suivra l'arc septentrional de ce cercle jusqu'à un point situé à 5

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situated 5 kilomètres south of the point of intersection of the above-mentioned arc of the circle with the route from Dosso to Matankari viâ Maourédé.

Thence it shall be drawn in a direct line to a point 20 kilomètres north of Konni (Birni-N'Kouni), and then in a direct line to a point 15 kilomètres south of Maradi, and thence shall be continued in a direct line to the point of intersection of the parallel of 13° 20′ north latitude with a meridian passing 70 miles to the east of the second intersection of the 14th degree of north latitude and the northern arc of the above-mentioned circle.

Thence the frontier shall follow in an easterly direction the parallel of 13° 20′ north latitude until it strikes the left bank of the River Komadugu Waubé (Komadougou Ouobé), the thalweg of which it will then follow to Lake Chad. But, if before meeting this river the frontier attains a distance of 5 kilomètres from the caravan route from Zinder to Yo, through Sua Kololua (Soua Kololoua), Adeber, and Kabi, the boundary shall then be traced at a distance of 5 kilomètres to the south of this route until it strikes the left bank of the River Komadugu Waubé (Komadougou Ouobé), it being nevertheless understood that, if the boundary thus drawn should happen to pass through a village, this village, with its lands, shall be assigned to the Government to which would fall the larger portion of the village and its lands. The boundary will then, as before, follow the thalweg of the said river to Lake Chad.

Thence it will follow the degree of latitude passing through the thalweg of the mouth of the said river up to its intersection with the meridian running 35′ east of

kilomètres au sud du point d'intersection avec le dit arc de cercle de la route de Dosso à Matankari par Maourédé.

Elle gagnera de là, en ligne droite, un point situé à 20 kilomètres au nord de Konni (Birni-N'Kouni), puis de là, également en ligne droite, un point situé à 15 kilomètres au sud de Maradi, et rejoindra ensuite directement l'intersection du parallèle 13° 20′ de latitude nord avec un méridien passant à 70 milles à l'est de la seconde intersection du 14e degré de latitude nord avec l'arc septentrional du cercle précité.

De là, la frontière suivra, vers l'est, le parallèle 13° 20′ de latitude nord jusqu'à, sa rencontre avec la rive gauche de la Rivière Komadougou Ouobé (Komadugu Waube), dont elle suivra le thalweg jusqu'au Lac Tchad. Mais si, avant de rencontrer cette rivière, la frontière arrive à une distance de 5 kilomètres de la route de caravane de Zinder à Yo, par Soua Kololoua (Sua Kololua), Adeber, et Kabi, la frontière sera tracée à une distance de 5 kilomètres au sud de cette route jusqu'à sa rencontre avec la rive gauche de la Rivière Komadougou Ouobé (Komadugu Waube), ètant toutefois entendu que si la frontière ainsi tracée venait à traverser un village, ce village, avec ses terrains, serait attribué au Gouvernement auquel se rattacherait la partie majeure du village et de ses terrains. Elle suivra ensuite, comme ci-dessus, le thalweg de la dite rivière jusqu'au Lac Tchad.

De là elle suivra le degré de latitude passant par le thalweg de l'embouchure de la dite rivière jusqu'à son intersection avec le méridien passant à 35′ est du cen-

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the centre of the town of Kouka, and will then follow this meridian southwards until it intersects the southern shore of Lake Chad.

It is agreed, however, that, when the Commissioners of the two Governments at present engaged in delimiting the line laid down in Article IV of the Convention of the 14th June, 1898, return home and can be consulted, the two Governments will be prepared to consider any modifications of the above frontier line which may seem desirable for the purpose of determining the line of demarcation with greater accuracy. In order to avoid the inconvenience to either party which might result from the adoption of a line deviating from recognized and well-established frontiers, it is agreed that in those portions of the projected line where the frontier is not determined by the trade routes, regard shall be had to the present political divisions of the territories so that the tribes belonging to the territories of Tessaoua-Maradi and Zinder shall, as far as possible, be left to France, and those belonging to the territories of the British zone shall, as far as possible, be left to Great Britain.

It is further agreed that, on Lake Chad, the frontier line shall, if necessary, be modified so as to assure to France a communication through open water at all seasons between her possessions on the north-west and those on the south-east of the Lake, and a portion of the surface of the open waters of the Lake at least proportionate to that assigned to her by the map forming Annex 2 of the Convention of the 14th June, 1898.

In that portion of the River Komadugu which is common to both parties, the populations on the banks shall have equal rights of fishing.

tre de la ville de Kouka, puis ce méridien vers le sud jusqu'à son intersection avec la rive sud du Lac Tchad.

Il est convenu, cependant, que lorsque les Commissaires des deux Gouvernements qui procèdent en ce moment à la délimitation de la ligue établie dans l'Article IV de la Convention du 14 Juin, 1898, resont revenus et pourront être consultés, les deux Gouvernements prendront en considération toute modification à la ligne-frontière ci-dessus qui semblerait désirable pour déterminer la ligne de démarcation avec plus de précision. Afin d'éviter les inconvénients qui pourraient résulter de part et d'autre d'un tracé qui s'écarterait des frontières reconnues et bien constatées, il est convenu que, dans la partie du tracé où la frontière n'est pas déterminée par les routes commerciales, il sera tenu compte des divisions politiques actuelles des territoires, de façon à ce que les tribus relevant des territoires de Tessaoua-Maradi et Zinder soient, autant que possible, laissées à la France, et celles relevant des territoires de la zone Anglaise soient, autant que possible, laissées à la Grande-Bretagne.

Il est en outre entendu que, sur le Tchad, la limite sera, s'il est besoin, modifiée de façon à assurer à la France une communication en eau libre en toute saison entre ses possessions du nord-ouest et du sud-est du Lac, et une partie de la superficie des eaux libres du Lac au moins proportionnelle à celle qui lui était attribuée par la carte formant l'Annexe No. 2 de la Convention du 14 Juin, 1898.

Dans la partie commune de la Rivière Komadougou, les populations riveraines auront égalité de droits pour la pêche.

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ARTICLE IX.

The present Convention shall be ratified, and the ratifications shall be exchanged, at London, within eight months, or earlier if possible.

In witness whereof his Excellency the Ambassador of the French Republic at the Court of His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, and His Majesty's Principal Secretary of State for Foreign Affairs, duly authorized for that purpose, have signed the present Convention and have affixed thereto their seals.

Done at London, in duplicate, the 8th day of April, 1904.

[L. S.] LANSDOWNE.

ARTICLE IX.

La présente Convention sera ratifiée, et les ratifications en seront échangées, à Londres, dans le délai de huit mois, ou plus tôt si faire se peut.

En foi de quoi son Excellence l'Ambassadeur de la République Française près Sa Majesté le Roi du Royaume-Uni de la Grande-Bretagne et d'Irlande et des Territoires Britanniques au delà des Mers, Empereur des Indes, et le Principal Secrétaire d'État pour les Affaires Étrangères de Sa Majesté Britannique, dûment autorisés à cet effet, ont signé la présente Convention et y ont apposé leurs cachets.

Fait à Londres, en double expédition, le 8 Avril, 1904.

[L. S.] PAUL CAMBON.

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BETWEEN THE UNITED STATES AND FRANCE.

TREATY OF FEBRUARY 6, 1778.

[Extract.]

ARTICLE IX.

The subjects, inhabitants, merchants, commanders of ships, masters and mariners of the States, provinces, and dominions of each party respectively shall abstain and forbear to fish in all places possessed or which shall be possessed by the other party; the Most Christian King's subjects shall not fish in the havens, bays, creeks, roads, coasts or places which the said United States hold or shall hereafter hold; and in like manner the subjects, people and inhabitants of the said United States shall not fish in the havens, bays, creeks, roads, coasts or places which the Most Christian King possesses or shall hereafter possess; and if any ship or vessel shall be found fishing contrary to the tenor of this treaty, the said ship or vessel, with its lading, proof being made thereof, shall be confiscated. It is, however, understood that the exclusion stipulated in the present article shall take place only so long and so far as the Most Christian King or the United States shall not in this respect have granted an exemption to some other nation.

ARTICLE X.

The United States, their citizens and inhabitants, shall never disturb the subjects of the Most Christian King in the enjoyment and exercise of the right of fishing on the banks of Newfoundland, nor in the indefinite and exclusive right which belongs to them on that part of the coast of that island which is designed by the treaty of Utrecht; nor in the rights relative to all and each of the isles which belong to His Most Christian Majesty; the whole conformable to the true sense of the treaties of Utrecht and Paris.

[NOTE.—This treaty was abrogated by act of Congress of July 7, 1798.]

TREATY OF SEPTEMBER 30, 1800.

[Ratifications exchanged, July 31, 1801.]

[Extract.]

ARTICLE XXVII.

Neither party will intermeddle in the fisheries of the other on its coasts, nor disturb the other in the exercise of the rights which it now holds or may acquire on the coast of Newfoundland, in the Gulph of St. Lawrence, or elsewhere on the American coast northward of the United States. But the whale and seal fisheries shall be free to both in every quarter of the world.

(NOTE.—This treaty expired by its own limitations on July 31, 1809.)

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SECTION II

OF THE APPENDIX

OF THE

CASE OF THE UNITED STATES

LEGISLATIVE ACTS, PROCLAMATIONS, AND EXECUTIVE ORDERS

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UNITED STATES.

STATUTES.

JOINT RESOLUTION OF JANUARY 18, 1865.

(13 Stat. L., Resolutions, No. 6.)

JOINT RESOLUTION Providing for the termination of the reciprocity treaty of fifth of June, eighteen hundred and fifty-four, between the United States and Great Britain.

Whereas it is provided in the reciprocity treaty concluded at Washington, the fifth of June, eighteen hundred and fifty-four, between the United States of the one part, and the United Kingdom of Great Britain and Ireland of the other part, that this treaty "shall remain in force for ten years from the date at which it may come into operation, and further, until the expiration of twelve months after either of the high contracting parties shall give notice to the other of its wish to terminate the same;" and whereas it appears, by a proclamation of the President of the United States, bearing date sixteenth of March, eighteen hundred and fifty-five, that the treaty came into operation on that day; and whereas, further, it is no longer for the interests of the United States to continue the same in force: Therefore,

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That notice be given of the termination of the reciprocity treaty, according to the provision therein contained for the termination of the same; and the President of the United States is hereby charged with the communication of such notice to the government of the United Kingdom of Great Britain and Ireland.

Approved January 18, 1865.

JOINT RESOLUTION OF MARCH 3, 1883.

(22 Stat. L., Resolutions, No. 22.)

(No. 22.) JOINT RESOLUTION Providing for the termination of articles numbered eighteen to twenty-five, inclusive, and article numbered thirty of the treaty between the United States of America and Her Britannic Majesty, concluded at Washington, May eighth, eighteen hundred and seventy-one.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in the judgment of Congress the provisions of articles numbered eighteen to twenty-five, inclusive, and of article thirty of the treaty between the United States and Her Britannic Majesty, for an amicable settlement of all causes of difference between the two countries, concluded at Washington on the eighth day of May, anno Domini eighteen hundred and seventy-one, ought to be terminated at the earliest possible time, and be no longer in force; and to this end the President be, and he hereby is, directed to give notice to the Government of Her Britannic

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Majesty that the provisions of each and every of the articles aforesaid will terminate and be of no force on the expiration of two years next after the time of giving such notice.

SEC. 2. That the President be, and he hereby is, directed to give and communicate to the Government of Her Britannic Majesty such notice of such termination on the first day of July anno Domini eighteen hundred and eighty-three, or as soon thereafter as may be.

SEC. 3. That on and after the expiration of the two years' time required by said treaty, each and every of said articles shall be deemed and held to have expired and be of no force and effect, and that every department of the Government of the United States shall execute the laws of the United States (in the premises,) in the same manner and to the same effect as if said articles had never been in force; and the act of Congress approved March first, anno Domini eighteen hundred and seventy-three, entitled "An act to carry into effect the provisions of the treaty between the United States and Great Britain, signed in the city of Washington the eighth day of May, eighteen hundred and seventy-one, relating to the fisheries," so far as it relates to the articles of said treaty so to be terminated shall be and stand repealed and be of no force on and after the time of the expiration of said two years.

Approved, March 3, 1883.

ACT OF MARCH 3, 1887.

(24 Stat. L., chap. 339.)

AN ACT To authorize the President of the United States to protect and defend the rights of American fishing vessels, American fishermen, American trading and other vessels, in certain cases, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever the President of the United States shall be satisfied that American fishing vessels or American fishermen, visiting or being in the waters or at any ports or places of the British dominions of North America, are or then lately have been denied or abridged in the enjoyment of any rights secured to them by treaty or law, or are or then lately have [been] unjustly vexed or harassed in the enjoyment of such rights, or subjected to unreasonable restrictions, regulations, or requirements in respect of such rights; or otherwise unjustly vexed or harassed in said waters, ports, or places; or whenever the President of the United States shall be satisfied that any such fishing vessels or fishermen, having a permit under the laws of the United States to touch and trade at any port or ports, place or places, in the British dominions of North America, are or then lately have been denied the privilege of entering such port or ports, place or places in the same manner and under the same regulations as may exist therein applicable to trading vessels of the most favored nation, or shall be unjustly vexed or harassed in respect thereof, or otherwise be unjustly vexed or harassed therein, or shall be prevented from purchasing such supplies as may there be lawfully sold to trading vessels of the most favored nation; or whenever the President of the United States shall be satisfied that any other vessels of the United States, their masters or crews, so arriving at or being in such British waters or ports or places of the British dominions of North America, are or then lately have been

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denied any of the privileges therein accorded to the vessels, their masters or crews, of the most favored nation, or unjustly vexed or harassed in respect of the same, or unjustly vexed or harassed therein by the authorities thereof, then, and in either or all of such cases, it shall be lawful, and it shall be the duty of the President of the United States, in his discretion, by proclamation to that effect, to deny vessels, their masters and crews, of the British dominions of North America, any entrance into the waters, ports, or places of, or within the United States (with such exceptions in regard to vessels in distress, stress of weather, or needing supplies as to the President shall seem proper), whether such vessels shall have come directly from said dominions on such destined voyage or by way of some port or place in such destined voyage elsewhere; and also, to deny entry into any port or place of the United States of fresh fish or salt fish or any other product of said dominions, or other goods coming from said dominions to the United States. The President may, in his discretion, apply such proclamation to any part or to all of the foregoing-named subjects, and may revoke, qualify, limit, and renew such proclamation from time to time as he may deem necessary to the full and just execution of the purposes of this act. Every violation of any such proclamation, or any part thereof, is hereby declared illegal, and all vessels and goods so coming or being within the waters, ports, or places of the United States contrary to such proclamation shall be forfeited to the United States; and such forfeiture shall be enforced and proceeded upon in the same manner and with the same effect as in the case of vessels or goods whose importation or coming to or being in the waters or ports of the United States contrary to law may now be enforced and proceeded upon. Every person who shall violate any of the provisions of this act, or such proclamation of the President made in pursuance hereof, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment for a term not exceeding two years, or by both said punishments, in the discretion of the court.

Approved, March 3, 1887.

PROCLAMATIONS.

PROCLAMATION OF JANUARY 14, 1784, RELATING TO THE TREATY OF SEPTEMBER 3, 1783.

BY THE UNITED STATES IN CONGRESS ASSEMBLED.

A PROCLAMATION.

Whereas definitive articles of peace and friendship between the United States of America and his Britannic majesty were concluded and signed at Paris on the third day of September, 1783, by the plenipotentiaries of the said United States and of his said Britannic majesty, duly and respectively authorized for that purpose, which definitive articles are in the words following.

[Here follow the articles of the treaty.]

And we, the United States in Congress assembled, having seen and duly considered the definitive articles aforesaid, did, by a certain act,

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under the seal of the United States, bearing date this 14th day of January, 1784, approve, ratify, and confirm the same, and every part and clause thereof, engaging and promising that we would sincerely and faithfully perform and observe the same, and never suffer them to be violated by any one or transgressed in any manner as far as should be in our power, and being sincerely disposed to carry the said articles into execution truly, honestly, and with good faith, according to the intent and meaning thereof, we have thought proper by these presents to notify the premises to all the good citizens of these United States, hereby requiring and enjoining all bodies of magistracy, legislative, executive, and judiciary, all persons bearing office, civil or military, of whatever rank, degree, or power, and all others the good citizens of these States of every vocation and condition, that, reverencing those stipulations entered into on their behalf under the authority of that federal bond by which their existence as an independent people is bound up together and is known and acknowledged by the nations of the world, and with that good faith, which is every man's surest guide, within their several offices, jurisdictions, and vocations, they carry into effect the said definitive articles and every clause and sentence thereof, sincerely, strictly, and completely.

Given under the seal of the United States.

Witness his excellency Thomas Mifflin, our President, at Annapolis, this 14th day of January, in the year of our Lord one thousand seven hundred and eighty-four, and of the sovereignty and independence of the United States of America the eighth.

[Annex]

RATIFICATION OF THE DEFINITIVE TREATY BY CONGRESS, JANUARY 14, 1784.

Know ye that we, the United States in Congress assembled, having seen and considered the definitive articles aforesaid [meaning the treaty signed by the commissioners in Paris on the 30th of November, 1782], have approved, ratified, and confirmed, and by these presents do approve, ratify, and confirm, the said articles, and every part and clause thereof, engaging and promising that we will sincerely and faithfully perform and observe the same, and never suffer them to be violated by any one, or transgressed in any manner, as far as lies in our power.

In testimony whereof we have caused the seal of the United States to be hereunto affixed. Witness his excellency Thomas Mifflin, President, this fourteenth day of January, in the year of our Lord one thousand seven hundred and eighty-four, and in the eighth year of the sovereignty and independence of the United States of America.

Resolved, unanimously, (nine States being present), That it be, and it is hereby, earnestly, recommended to the legislatures of the respective states to provide for the restitution of all estates, rights, and properties which have been confiscated belonging to real British subjects; and also of the estates, rights, and properties of persons resident in districts which were in the possession of his Britannic majesty's arms at any time between the thirtieth day of November,

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1782, and the 14th day of January, 1784, and who have not borne arms against the said United States; and that persons of any other description shall have free liberty to go to any part or parts of any of the thirteen United States, and therein to remain twelve months unmolested in their endeavors to obtain the restitution of such of their estates, rights, and properties as may have been confiscated; and it is also hereby earnestly recommended to the several States to reconsider and revise all their acts or laws regarding the premises, so as to render the said laws or acts perfectly consistent, not only with justice and equity, but with that spirit of conciliation which, on the return of the blessings of peace, should universally prevail; and it is hereby also earnestly recommended to the several States that the estates, rights, and properties of such last-mentioned persons should be restored to them, they refunding to any persons who may be now in possession the *bona fide* price (where any has been given) which such person may have paid on purchasing any of the said lands, rights, or properties since the confiscation.

Ordered, That a copy of the proclamation of this date, together with the recommendation, be transmitted to the several States by the secretary.

PROCLAMATION OF JANUARY 30, 1819, RELATING TO THE TREATY OF OCTOBER 20, 1818.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas a convention between the United States of America and his majesty the king of the united kingdom of Great Britain and Ireland, was made and concluded at London, on the 20th day of October, in the year of our Lord one thousand eight hundred and eighteen, by Albert Gallatin, envoy extraordinary and minister plenipotentiary of the United States to the court of France, and Richard Rush, their envoy extraordinary and minister plenipotentiary to the court of his Britannic majesty, and the right honorable Frederick John Robinson, treasurer of his majesty's navy and president of the privy council for trade and plantations, and Henry Goulburn, esq., one of his majesty's under secretaries of state, fully authorized and empowered by their respective governments: And whereas the said convention was duly ratified by his royal highness the prince regent, in the name and on behalf of his Britannic majesty, on the second day of November, in the year of our Lord one thousand eight hundred and eighteen; and by the president of the United States, by and with the advice and consent of the senate thereof, on the twenty-eighth day of January following: And whereas the ratifications of the two governments were exchanged, in the city of Washington, on the thirtieth day of the present month of January, by John Quincy Adams, secretary of state of the United States, on the part of the United States, and the right hon. Charles Bagot, his Britannic majesty's envoy extraordinary and minister plenipotentiary near the United States, on the part of his Britannic majesty; the articles of which convention are, word for word, as follows:

[Here follow the articles of the treaty.]

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Now, therefore, be it known, that I JAMES MONROE, president of the United States, have caused the said convention to be made public, to the end that the same, and every clause and article thereof, may be observed and fulfilled, with good faith, by the United States, and the citizens thereof.

In witness whereof, I have hereunto set my hand, and [L. S] caused the seal of the United States to be affixed.

Done at the city of Washington, this thirtieth day of January, in the year of our Lord one thousand eight hundred and nineteen, and of independence the forty-third.

JAMES MONROE.

By the president,
JOHN QUINCY ADAMS, *secretary of state.*

PROCLAMATION OF JANUARY 31, 1885, TERMINATING CERTAIN ARTICLES OF THE TREATY OF MAY 8, 1871.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas the Treaty concluded between the United States of America and Her Majesty the Queen of Great Britain and Ireland, concluded at Washington on the 8th day of May, 1871, contains among other Articles the following, viz:

[Here follow Articles XVIII to XXV, XXX, and XXXII of the treaty.]

And, whereas, pursuant to the provisions of Article XXXIII. of said Treaty, due notice has been given to the Government of Her Britannic Majesty, of the intention of the Government of the United States of America, to terminate the above recited Articles of the Treaty in question, on the 1st day of July, 1885;

And, whereas, pursuant to the terms of said Treaty, and of the notice given thereunder by the Government of the United States of America to that of Her Britannic Majesty, the above recited articles of the Treaty of Washington, concluded May 8, 1871, will expire and terminate on the 1st day of July, 1885;

Now, therefore, I, Chester A. Arthur, President of the United States of America, do hereby give public notice that Articles XVIII., XIX., XX., XXI., XXII., XXIII., XXIV., XXV., XXX. and XXXII., of the Treaty of Washington, concluded May 8, 1871, will expire and terminate on the 1st day of July, 1885, and all citizens of the United States are hereby warned that none of the privileges secured by the above recited articles of the Treaty in question will exist after the 1st day of July next; all American fishermen should govern themselves accordingly.

Done at the City of Washington, this 31st day of January, in the year of Our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States of America the one hundred and ninth.

[SEAL.] CHESTER A ARTHUR.

By the President:
FREDK. T. FRELINGHUYSEN,
Secretary of State.

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GREAT BRITAIN.

STATUTES.

ACT OF 1699.

(10 and 11 Wm. III, cap. 25.)

AN ACT To encourage the trade to Newfoundland.

Whereas the trade of and fishing at Newfoundland is a beneficial trade to this kingdom, not only in the employing great numbers of seamen and ships, and exporting and consuming great quantities of provisions and manufactures of this realm, whereby many tradesmen and poor artificers are kept at work, but also in bringing into this nation, by returns of the effects of the said fishery from other countries, great quantities of wine, oil, plate, iron, wool, and sundry other useful commodities, to the increase of his Majesty's revenue, and the encouragement of trade and navigation; be it enacted by the King's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from henceforth it shall and may be lawful for all his Majesty's subjects residing within this his realm of England, or the dominions thereunto belonging, trading or that shall trade to Newfoundland, and the seas, rivers, lakes, creeks, harbours in or about Newfoundland, or any of the islands adjoining or adjacent thereunto, to have, use, and enjoy the free trade and traffick, and art of merchandize and fishery, to and from Newfoundland, and peaceably to have, use, and enjoy, the freedom of taking bait and fishing in any of the rivers, lakes, creeks, harbours, or roads, in or about Newfoundland, and the said seas, or any of the islands adjacent thereunto, and liberty to go on shore on any part of Newfoundland, or any of the said islands, for the curing, salting, drying, and husbanding of their fish, and for making of oil, and to cut down wood and trees there for building and making or repairing of stages, ship-rooms, trainfats, hurdles, ships, boats, and other necessaries for themselves and their servants, seamen and fishermen, and all other things which may be useful or advantageous to their fishing trade, as fully and freely as at any time heretofore hath been used or enjoyed there by any of the subjects of his Majesty's royal predecessors, without any hindrance, interruption, denial, or disturbance of or from any person or persons whatsoever; and that no alien or stranger whatsoever (not residing within the kingdom of England, dominion of Wales, or town of Berwick upon Tweed) shall at any time hereafter take any bait, or use any sort of trade or fishing whatsoever in Newfoundland, or in any of the said islands or places above mentioned.

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II. And for the preserving the said harbours from all annoyances; be it further enacted by the authority aforesaid, That from and after the twenty-fifth day of March, one thousand seven hundred, now next coming, no ballast, prest stones, or any thing else hurtful to or annoying any of the harbours there, shall be thrown out of any ship or otherwise, by any person or persons whatsoever, to the prejudice of any of the said harbors, but that all such ballast and other things shall be carried on shore; and be laid where they may do no annoyance.

III. And be it further enacted by the authority aforesaid, That no person or persons whatsoever shall (at his departure out of the said country, or at any other time) destroy, deface, or do any detriment to any such stage or cook room, or to the stakes, spikes, nails, or any other thing whatsoever thereto belonging, as he or they shall fall into at his or their coming into the said country, but that he or they shall (during his or their stay there) content him and themselves with such stage or stages only as are needful for him or them, and shall also (at his or their departure thence) leave all such his or their stage or stages, without doing or causing to be done any wilful damage to any of them; and that for the repairing of such stage or stages as he or they shall so take, during his or their abode there, the same shall be done with timber fetcht out of the woods there, and not by the ruining, breaking down, demolishing, prejudicing, or any wise injuring the stage or stages of any other person or persons whatsoever.

IV. And be it further enacted by the authority aforesaid, That (according to the ancient custom there used) every such fishing ship from England, Wales, or Berwick, or such fishermen as shall, from and after the said twenty-fifth day of March, first enter any harbour or creek in Newfoundland, in behalf of his ship, shall be admiral of the said harbour or creek during that fishing season, and for that time shall reserve to himself only so much beech or stakes, or both, as are needful for the number of such boats as he shall there use, with an overplus only for the use of one boat more than he needs, as a privilege for his first coming thither; and that the master of every of such second fishing ship, as shall enter any such harbour or creek, shall be vice admiral of such harbour or creek during that fishing season; and that the master of every such fishing ship next coming, as shall enter any such harbour or creek, shall be rear admiral of such harbour or creek during that fishing season, and that the master of every fishing ship there, shall content himself with such beech or stakes, as he shall have necessary use for, without keeping or detaining any more beech or stakes, to the prejudice of any such other ship or vessel as shall arrive there; and that such person or persons as are possessed of several places in several harbours or creeks there, shall make his or their election of such place as he or they shall choose to abide in; and shall, also, within eight and forty hours after any after-comer or after-comers into such place or places shall demand such his or their resolution touching such his or their election (if the weather will so soon permit, or so soon after as the weather will permit) give or send his or their resolution to such after-comer or after-comers, touching such his or their election of such place as he or they shall so choose to abide in for the fishing season, to the end that such after-comer or after-comers may likewise choose his or their place or places of his or their abode there; and in case any difference shall arise touching the

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said matters, the admirals of the respective harbours where such differences shall arise, or any two of them shall proportion the place to the several ships, in the several harbours they fish in, according to the number of boats which each of the said ships shall keep.

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XIV. And be it further enacted by the authority aforesaid, That the admirals of and in every port and harbour in Newfoundland for the time being, be and are hereby authorized and required (in order to preserve peace and good government amongst the seamen and fishermen, as well in their respective harbours, as on the shore) to see the rules and orders in this present act contained, concerning the regulation of the fishery there, duly put in execution; and that each of the said admirals do yearly keep a journal of the number of all ships, boats, stages and train-fats, and of all the seamen belonging to and employed in each of their respective harbours, and shall also (at their return to England) deliver a true copy thereof, under their hands, to his Majesty's most honourable privy council.

XV. And be it further enacted by the authority aforesaid, That in case any difference or controversy shall arise in Newfoundland, or the islands thereunto adjoining, between the masters of fishing ships and the inhabitants there, or any by-boat keeper, for or concerning the right and property of fishing rooms, stages, flakes, or any other building or conveniency for fishing or curing of fish, in the several harbours or coves, the said differences, disputes, and controversies, shall be judged and determined by the fishing admirals, in the several harbours and coves; and in case of any of the said masters of fishing ships by-boat keepers or inhabitants, shall think themselves aggrieved by such judgment or determination, and shall appeal to the commanders of any of his Majesty's ships of war, appointed as convoys for Newfoundland, the said commander is hereby authorized and impowered to determine the same, pursuant to the regulation in this act.

XVI. And to the end that the inhabitants, fishermen, seamen, and all and every other person and persons residing or being at Newfoundland, or any of the said islands, or other places, may with all devotion join in their solemn prayers and addresses to Almighty God, for the obtaining of his blessing upon their persons and endeavors; be it hereby enacted, That all and every the inhabitants of Newfoundland, or the said islands or places adjacent near thereto, shall strictly and decently observe every Lord's day, commonly called Sunday; and that none of the said inhabitants (who keep any tavern, alehouse, or other public house for entertainment) shall entertain or sell, vend, utter or dispose of to any fishermen, seamen or other person whatsoever, upon any Lord's day or Sunday, any wine, beer, ale, cyder, strong waters or tobacco, or any other liquor or liquors whatsoever.

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ACT OF 1775.

(15 Geo. III, cap. 31.)

AN ACT For the encouragement of the fisheries carried on from Great Britain, Ireland, and the British dominions in EUROPE, and for securing the return of the fishermen, sailors and others employed in the said fisheries, to the ports thereof, at the end of the fishing season.

Whereas the fisheries carried on by his Majesty's subjects of Great Britain and of the British dominions in Europe have been found to be the best nurseries for able and experienced seamen, always ready to man the royal navy when occasions require; and it is therefore of the highest national importance to give all due encouragement to the said fisheries, and to endeavour to secure the annual return of the fishermen, sailors and others employed therein, to the ports of Great Britain, and of his Majesty's dominions before mentioned, at the end of every fishing season, now, in order to promote these great and important purposes, and with a view in the first place, to induce his Majesty's subjects to proceed early from the ports of Great Britain to the banks of Newfoundland, and thereby to prosecute the fishery on the said banks to the greatest advantage, may it please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the first day of January, one thousand seven hundred and seventy six, the respective bounties hereinafter mentioned shall be paid and allowed annually, for eleven years, for a certain number of ships or vessels employed in the British fishery on the banks of Newfoundland, under the limitations and restrictions hereinafter expressed; that is to say, such vessels shall appear by their register to be British built, and owned by his Majesty's subjects residing in Great Britain or Ireland, or the Islands of Guernsey, Jersey or Man; and be of the burthen of fifty tons or upwards and navigated with not less than fifteen men each three-fourths of whom, besides the master, shall be his Majesty's subjects; and, in other respects qualified, and subject to the same rules and restrictions, as are described by an act made in the tenth and eleventh years of the reign of the late King William the third, (intituled, An Act to encourage the trade to Newfoundland) and shall be fitted and cleared out from some port in Great Britain after the said first day of January, one thousand seven hundred and seventy-six, and after that day in each succeeding year, and shall proceed to the banks of Newfoundland; and having catched a cargo of fish upon those banks consisting of not less than ten thousand fish by tale, shall land the same at one of the ports on the southern or eastern side of the island of Newfoundland, between Cape Ray and Cape de Grat, on or before the fifteenth day of July in each year; and shall make one more trip at least to the said banks, and return with another cargo of fish catched there to the same port; in which case, there twenty-five vessels first arriving at the said island of Newfoundland from the banks thereof, with a cargo of fish catched there, consisting of ten thousand fish by tale at the least, and after landing the same at one of the ports within the limits before mentioned in Newfoundland, shall proceed again to the said banks, and return

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to the said island with another cargo of fish, shall be intitled to forty pounds each; and one hundred vessels which shall so arrive the next in order of time, on or before the said fifteenth day of July in each year, at the said island, with a like cargo, and shall proceed again to the said banks, and return from thence in the manner hereinbefore mentioned, shall be intitled to twenty pounds each; and one hundred other vessels which shall so arrive the next in order of time, on or before the said fifteenth day of July in each year, at the said island, with a like cargo, and shall proceed again to the said banks, and return from thence in the manner hereinbefore mentioned, shall be intitled to ten pounds each, upon the master or owner of such vessel's producing to the collector of his Majesty's customs at the port in Great Britain from whence such vessel was cleared out a certificate, under the hand and seal of the governor of Newfoundland, that the master of such vessel had produced to him a certificate under the hands of the collector and comptroller of the customs at the port from whence such vessel was cleared out, testifying that such vessel was duly qualified to proceed on such fishery, in pursuance of the before mentioned act, made in the tenth and eleventh years of King William the third; and that it has been made appear to his satisfaction, by a certificate under the hand and seal of the naval officer of the district in Newfoundland where such fish was landed, or where there is no naval officer, under the hand and seal of the commander of any of his Majesty's ships stationed there, or of such officer as the governor shall approve, specifying the time of such vessel's arrival, in manner before directed, that such vessel was intitled by the priority and time of her arrival to one or other of the bounties therein mentioned, as the fact may be; and that the master and mate of such vessel had made oath before such naval or other officer as aforesaid, that the number of fish taken on the first trip amounted to ten thousand at least by tale, that he had made two trips at least, and that all the fish on both trips were catched on the banks of Newfoundland; which certificate and oath the said governor and naval or other officer as aforesaid are hereby impowered and required to grant and administer to the master and mate of such vessel without fee or reward; and upon delivering up the said certificate to such collector the respective bounties therein mentioned shall be paid by such collector out of any money remaining in his hands arising by the duties of customs or other subsidies upon foreign goods imported into this kingdom; and in case such collector shall not have sufficient money in his hands to pay the said bounties, he shall certify the same to the commissioners of his Majesty's customs in England or Scotland respectively, who are hereby authorized and required to order the same to be paid by the receiver general of the customs, out of any money in his hands arising by any of the duties and revenues under their management respectively.

II. And be it further enacted by the authority aforesaid, That for the better accomodation of the persons belonging to vessels employed in the Newfoundland fishery, it shall and may be lawful for the masters and crews belonging to any vessels fitted out and employed in that fishery in pursuance of this or any other act, to occupy and use, for the purpose of curing, salting, drying and husbanding their fish, any vacant or void space whatever on any part of Newfound-

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land which is not then occupied and used for the said fishery, without any let, disturbance or hinderance from any person or persons whatsoever, although such unoccupied places may not before have been reputed ships rooms; and all such unoccupied places shall from henceforth be deemed and taken to be ships rooms, any custom or usage to the contrary notwithstanding.

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IV. And in order to obviate any doubts that have arisen, or may arise, to whom the privilege or right of drying fish on the shores of Newfoundland does or shall belong, under the before mentioned act, made in the tenth and eleventh year of the reign of King William the Third, which right or privilege has hitherto only been enjoyed by his Majesty's subjects of Great Britain, and the other British dominions in Europe; be it enacted and declared by the authority aforesaid, That the said right and privilege shall not be held and enjoyed by any of his Majesty's subjects arriving at Newfoundland from any other country except from Great Britain, or one of the British dominions in Europe.

V. And it is hereby further enacted by the authority aforesaid, That it shall and may be lawful for any of his Majesty's subjects residing in Ireland to ship and lade there, and to transport directly from thence to Newfoundland, or to any part of America where the fishery is now or shall hereafter be carried on, on board any ship or vessel which may lawfully trade or fish there, any provisions, and also any hooks, lines, netting, or other tools or implements necessary for and used in the fishery by the crews of the ships or vessels carrying out the same, and the craft belonging to and employed by such ships or vessels in the said fishery, such provisions, hooks, lines, netting, or other tools or implements, being the product and manufacture of Great Britain or Ireland; and that it shall and may be lawful for any of his Majesty's subjects, residing in the Isle of Man, in like manner to export directly from thence any of the articles herein-before mentioned for the purpose aforesaid, such articles being the product or manufacture of Great Britain, or the said Isle of Man, any law, custom or usage to the contrary notwithstanding.

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VII. And it is hereby further enacted by the authority aforesaid, That from and after the first day of January, one thousand seven hundred and seventy six, all vessels fitted and cleared out as fishing ships in pursuance of this act, or of the before-mentioned act, made in the tenth and eleventh years of the reign of the late King William the third, and which shall be actually employed in the fishery there, or any boat or craft whatsoever employed in carrying coastwise, to be landed or put on board any ships or vessels, any fish, oil, salt provisions, or other necessaries, for the use and purpose of that fishery, shall not be liable to any restraint or regulation with respect to days or hours of working, nor to make any entry at the customhouse at Newfoundland, except a report to be made by the master on his first arrival there, and at his clearing out from thence; and that a fee not exceeding two shillings and six pence shall and may be taken by the officers of the customs at Newfoundland for each such report; and that no other fee shall be taken or demanded by any officer of the customs there, upon any other pretence whatsoever relative to the said fishery, any law, custom or usage to the contrary notwithstanding.

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VIII. Provided always, and be it enacted, That in case any such fishing ship or vessel shall at her last clearing out from the said island of Newfoundland have on board, or export any goods or merchandise whatsoever, except fish, or oil made of fish, such ship or vessel, and the goods thereon laden, shall be subject and liable to the same securities, restrictions and regulations, in all respects, as they would have been subject and liable to if this act had not been made, anything hereinbefore contained to the contrary notwithstanding.

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XII. And whereas it has been a practice of late years for divers persons to seduce the fishermen, sailors, artificers, and others, employed in carrying on the fishery, arriving at Newfoundland, on board fishing and other vessels from Great Britain, and the British dominions in Europe, to go from thence to the continent of America, to the great detriment of the fishery and the naval force of this kingdom: now, in order to remedy the said evil, and to secure the return of the said fishermen, sailors, artificers, and others, employed as aforesaid to the British dominions in Europe, be it further enacted by the authority aforesaid, That from and after the first day of January one thousand seven hundred and seventy-six, it shall not be lawful for the master, or person having the charge or command of any ship or vessel trading to or from any place within the government of Newfoundland, to carry or convey, as passengers, any such fishermen, sailors, artificers, and others, employed as aforesaid, from thence to any part of the continent of America, without the permission under the hand and seal of the governor of the said island of Newfoundland, under the penalty of forfeiting two hundred pounds for every such offence.

XIII. And whereas in several acts, passed in the eleventh and twelfth years of William the Third, the eighth of George the First and the second and twelfth of George the Second, provision has been made to prevent seamen and mariners in the merchant service being wilfully left beyond sea, and to secure and provide for their return home to such part of his Majesty's dominions whereto they belong: and whereas, for want of such provisions being extended to seamen and fishermen going out as passengers to Newfoundland, and hired and employed in the fisheries carried on there, great numbers of them remain in that country at the end of every fishing season, who would otherwise return home and some of them have frequently turned robbers and pirates; for remedy of which evil, be it enacted by the authority aforesaid, That no person or persons whatsoever shall from and after the first day of January, one thousand, seven hundred and seventy-six, employ or cause to be employed, at Newfoundland, for the purpose of carrying on the fishery there, any seaman or fisherman going as passengers, or any seaman or fisherman hired there, without first entering into an agreement or contract in writing with every such seaman or fisherman, declaring what wages such seaman or fisherman is to have, and the time for which he shall serve, which shall be signed by both parties; Wherein it shall be stipulated (amongst other things) that the person so hiring or employing shall be at liberty and he is hereby authorized, required and directed, to reserve, retain, and deduct, out of the wages of

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every person so hired or employed, a sum of money equal to the then current price of a man's passage home, not exceeding forty shillings for each man, which money such hirer or employer shall, at the end of each fishing season, or at the expiration of the covenanted time of service of such seaman or fisherman, pay or cause to be paid, to the master of a passage or other ship, who shall undertake or agree to carry such seaman or fisherman home to the country whereto he belongs, and shall also convey such seaman or fisherman to and on board such passage or other ship, taking the master's receipt for the passage money, which receipt he shall immediately thereupon deliver to such seaman or fisherman.

XIV. And be it further enacted by the authority aforesaid, That no hirer or employer of any such seaman or fisherman shall pay or advance, or cause to be paid or advanced to such seaman or fisherman, in money, liquor and goods, or either of them, during the time he shall be in his service, more than one-half of the wages which shall at any time be due to him; but such hirer or employer shall, and is hereby required and directed, immediately at or upon the expiration of every such man's covenanted time of service, to pay either in money, or in good bills of exchange, payable either in Great Britain or Ireland, or in the country to which such seaman or fisherman belongs, the full balance of his wages, except the money hereinbefore directed to be retained for his passage home; and it shall not be lawful for any such hirer or employer to turn away or discharge any such seaman or fisherman, except for wilful neglect of duty, or other sufficient cause, before the expiration of his covenanted time of service; and in case the hirer or employer of any such seaman or fisherman shall refuse or neglect to comply with any of the terms hereinbefore mentioned, or shall otherwise offend against this act, every such person so offending shall forfeit and pay for every such offence, besides the balance that shall be due to such seaman or fisherman, the money herein-before directed to be retained for his passage home, the sum of ten pounds, to the use of such person or persons who shall inform or sue for the same.

XV. And be it further enacted by the authority aforesaid, That in all cases where disputes shall arise concerning the wages of any such seaman or fisherman, the hirer or employer shall be obliged to produce the contract or agreement in writing, hereinbefore directed to be entered into with every such seaman or fisherman.

XVI. And be it further enacted by the authority aforesaid, That all the fish and oil which shall be taken and made by the person or persons who shall hire or employ such seaman or fisherman shall be subject and liable, in the first place to the payment of the wages of every such seaman or fisherman.

XVII. And be it further enacted by the authority aforesaid That in case any such seaman or fisherman shall at any time wilfully absent himself from his duty or employ, without the leave and consent of his hirer or employer, or shall wilfully neglect or refuse to work according to the true intent and meaning of such contract or agreement, he shall, for every day he shall so absent himself, or neglect or refuse to work as aforesaid, forfeit two days' pay to such hirer or employer; and, if any such seaman or fisherman shall wilfully absent himself from his said duty or employ for the space of five days, with-

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out such leave as aforesaid, he shall be deemed a deserter, and shall forfeit to such hirer or employer all such wages as shall at the time of such desertion be due to him (except so much as is herein-before directed to be reserved and retained for the purpose of paying his passage home;) and it shall and may be lawful to and for the governor of Newfoundland, or his surrogates, or the commissary of the vice admiralty court for the time being, or for any justice of the peace in Newfoundland, to issue his or their warrant or warrants to apprehend every such deserter, and on the oath of one or more credible witness or witnesses to commit him to prison, there to remain until the next court of session which shall be holden in pursuance of the commission of the said governor for the time being; and if found guilty of the said offence at such session, it shall and may be lawful to and for the said court of session to order such deserter to be publicly whipped as a vagrant and afterwards to be put on board a passage ship, in order to his being conveyed back to the country whereto he belongs.

XVIII. And be it further enacted by the authority aforesaid, That all disputes which shall arise concerning the wages of every or any such seaman or fisherman, and all offences which shall be committed by every hirer or employer of such seaman or fisherman, against this act, shall and maybe inquired into, heard and determined, and the penalties and forfeitures thereby incurred shall and may be recovered in the court of session hereinbefore mentioned, or in the court of vice admiralty having jurisdiction in the said island of Newfoundland.

XIX. And whereas by an act of parliament, passed in the sixth year of the reign of her late majesty Queen Anne, intituled, "An act for the encouragement of the trade to America, it is, amongst other things, enacted That no mariner or other person who shall serve on board, or be retained to serve on board, any privateer, or trading ship or vessel, that shall be employed in any part of America nor any mariner or other person being on shore in any part thereof, shall be liable to be impressed or taken away by any officer or officers of or belonging to any of her Majesty's ships of war, impowered by the Lord high admiral, or any other person whatsoever, unless such mariner shall have before deserted from such ship of war: and whereas the said privilege or exemption so given by the said act to mariners serving on ships or vessels employed in any of the seas or ports of the continent of America, or residing on shore there, is prejudicial to the fisheries carried on by his Majesty's subjects of Great Britain and Ireland, and others his Majesty's dominions in Europe, and has proved an encouragement to mariners belonging thereto to desert in time of war, or at the appearance of a war, to the British plantations on the said continent of America; be it therefore enacted by the authority aforesaid, That the said clause, so far as it relates to the exempting of mariners or other persons serving, or retained to serve, in any ship or vessel in the seas or ports of the continent of America, or other persons on shore there, from being impressed, be and the same is hereby repealed.

XX. And whereas the immoderate use of rum and other spirits imported into Newfoundland from his Majesty's colonies and plantations in America has been found to be highly detrimental to the

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fisheries carried on there, and it is therefore proper to endeavor to diminish the consumption thereof; be it enacted by the authority aforesaid, That from and after the first day of January, one thousand, seven hundred and seventy-six, there shall be paid in to his Majesty, his heirs and successors, for every gallon of rum, or other spirits, which shall be brought or imported into the island of Newfoundland from any British colony or plantation on the continent of America, the sum of one shilling sterling money of Great Britain, and the same shall be collected, recovered and paid, to the amount of the value of which such nominal sum bears in Great Britain, and may be received and taken according to the proportion and value of five shillings and six pence the ounce in silver; and the said duty hereby granted shall be raised, levied, collected, paid and recovered, in the same manner and form, and by such rules, ways and means, and under such penalties and forfeitures, except in such cases where any alteration is made by this act, as any other duties payable to his Majesty upon goods imported into any British colony or plantation in America are raised, levied, collected, paid and recovered, by any act or acts of parliament, as fully and effectually, to all intents and purposes, as if the several clauses, powers, directions, penalties and forfeitures relating thereto were particularly repeated and again enacted in the body of this present act; and that all the monies that shall arise by the said duty (except the necessary charges of raising, collecting, levying, recovering, answering, paying and accounting for the same) shall be paid into the receipt of his Majesty's exchequer, and applied and appropriated to the same uses and purposes as the duties arising by that part of the customs, commonly called The Old Subsidy, payable in Great Britain, are applied and appropriated.

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XXXIV. And be it further enacted by the authority aforesaid, That from and after the first day of January, one thousand seven hundred and seventy-six, the penalties and forfeitures inflicted by any act of parliament relating to the trade or revenues of the British colonies or plantations in America, which shall be incurred in the said island of Newfoundland, shall be sued for, prosecuted, and recovered, in the court of vice admiralty having jurisdiction in the said island, and in no other; and if any person or persons shall think him or themselves aggrieved by any judgment, sentence, or determination of any court of vice admiralty, or other court having jurisdiction in Newfoundland, upon any suit or prosecution commenced there for any penalty or forfeiture inflicted by any act of parliament relating to the trade or revenues of the British colonies or plantations in America, it shall and may be lawful for such party to appeal from such judgment, sentence or determination, in the first instance, to the proper court of admiralty in Great Britain, or to his Majesty in council; and that no appeal shall in such case lie or be brought in any other court or jurisdiction whatsoever, any law, custom, or usage, to the contrary notwithstanding.

XXXV. And it is hereby further enacted by the authority aforesaid, That from and after the first day of January, one thousand seven hundred and seventy-six, the customs and other duties which now are or hereafter may be due and payable upon any goods or merchandise brought or imported into, or exported or carried from,

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the island of Newfoundland, by virtue of this or any act or acts of parliament, and the officers of his Majesty's customs appointed for executing and carrying into execution the several laws relating to the trade and revenue there, shall be under the management and direction of the commissioners of his Majesty's customs in England for the time being, under the authority and direction of the high treasurer of Great Britain, or the commissioners of the treasury for the time being, any law, patent, custom, or usage, to the contrary notwithstanding.

XXXVI. Provided always, and it is hereby further enacted by the authority aforesaid, That all deputations and other authorities granted by the commissioners of the customs for North America, before the said first day of January, one thousand seven hundred and seventy-six, to any officer or officers acting in and for the said island of Newfoundland, shall continue in force, as fully to all intents and purposes as if this act had not been made, until the deputations or other authorities so granted to such officer or officers respectively shall be revoked, annulled, or made void by the high treasurer of Great Britain, or commissioners of the treasury for the time being.

XXXVII. And be it further enacted by the authority aforesaid, That if any action or suit shall be commenced against any person or persons for any thing done in pursuance of this act of parliament, the defendant or defendants in such action or suit may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance of and by the authority of this act; and if it shall appear so to have been done, the jury shall find for the defendant or defendants; and if the plaintiff shall be non-suited or discontinue his action after the defendant or defendants have appeared, or if judgment shall be given upon any verdict or demurrer against the plaintiff, the defendant or defendants shall recover treble costs, and have the like remedy for the same as defendants have in other cases by law.

ACT OF 1789.

(29 Geo. III, cap. 53.)

AN ACT For further encouraging and regulating the Newfoundland, Greenland, and southern whale fisheries.

Whereas, as well by immemorial usage as by the provisions of former laws, the right and privilege of drying fish on the island of Newfoundland do not belong to any of his Majesty's subjects arriving there, except from Great Britain, or one of His Majesty's dominions in Europe; for preventing frauds, and thereby better securing to his Majesty's said subjects of Great Britain, and of the other British dominions in Europe, the full advantages of the fishery carried on from thence, and of drying fish on the shores of the island of Newfoundland, be it declared and enacted by the King's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That no fish, taken or caught by any of his Majesty's subjects, or other persons, arriving

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at Newfoundland or its dependencies, or on the banks of the said island, except from Great Britain, or one of the British dominions in Europe, shall be permitted to be landed or dryed on the said island of Newfoundland, always excepting the rights granted by treaty to the subjects of his most christian Majesty, on that part of the island of Newfoundland beginning at Cape Saint John, passing to the north and descending by the western coast of the said island to the place called Cape Raye.

ACT OF JUNE 14, 1819.

(59 Geo. III. cap. 38.)

AN ACT To enable his Majesty to make Regulations with respect to the taking and curing Fish on certain parts of the Coasts of Newfoundland, Labrador, and his Majesty's other Possessions in North America, according to a Convention made between his Majesty and the United States of America.

Whereas a Convention between his Majesty and the United States of America was made and signed at London, on the Twentieth Day of October One Thousand Eight hundred and eighteen; and by the first Article of the said Convention, reciting that Differences had arisen respecting the Liberty claimed by the United States for the Inhabitants thereof to take, dry and cure Fish in certain Coasts, Bays Harbours and Creeks of His Britannic Majesty's Dominions in America, it is agreed, that the Inhabitants of the said United States shall have forever, in common with the subjects of His Britannic Majesty, the Liberty to take Fish of every Kind on that Part of the Southern Coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the Western and Northern Coasts of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the Shores of the Magdalen Islands, and also on the Coasts, Bays, Harbours and Creeks from Mount Joly on the Southern Coasts of Labrador, to and through the Straits of Belleisle, and thence northwardly indefinitely along the Coast without Prejudice, however, to any of the exclusive Rights of the Hudson's Bay Company; and it was also by the said Article of the said Convention agreed, that the American Fishermen should have liberty forever to dry and cure Fish in any of the unsettled Bays, Harbours and Creeks of the Southern Part of the Coast of Newfoundland above described, and of the Coast of Labrador but that so soon as the same, or any Portion thereof, should be settled, it should not be lawful for the said Fishermen to dry or cure Fish at such Portion so settled, without previous Agreement for such purpose with the Inhabitants, Proprietors or Possessors of the Ground: And Whereas it is expedient that His Majesty should be enabled to carry into execution so much of the said Convention as is above recited, and to make Regulations for that Purpose:

Be it therefore enacted by The King's Most Excellent Majesty, by and with the advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the passing of this Act, it shall and maybe lawful for His Majesty, by and with the Advice of His Majesty's Privy Council, by any Order or Orders in Council, to be from time to time made for that purpose, to make such Regu-

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lations, and to give such Directions, Orders and Instructions to the Governor of Newfoundland, or to any Officer or Officers on that Station, or to any other person or persons whomsoever, as shall or may be from time to time deemed proper and necessary for the carrying into Effect the Purposes of the said Convention, with relation to the taking, Drying and curing of Fish by Inhabitants of the United States of America, in common with British Subjects, within the limits set forth in the said Article of the said Convention and hereinbefore recited; any Act or Acts of Parliament, or any Law, Custom or Usage to the contrary in anywise notwithstanding.

II. And be it further enacted, That from and after the passing of this Act it shall not be lawful for any Person or Persons, not being a natural born Subject of His Majesty, in any Foreign Ship, Vessel or Boat, nor for any Person in any Ship, Vessel or Boat, other than such as shall be navigated according to the Laws of the United Kingdom of Great Britain and Ireland, to fish for, or to take, dry or cure any Fish of any Kind whatever within Three Marine Miles of any Coasts, Bays, Creeks or Harbours whatever, in any Part of His Majesty's Dominions in America, not included within the Limits specified and described in the first Article of the said Convention, and hereinbefore recited; and that if any such Foreign Ship, Vessel or Boat, or any Persons on board thereof, shall be found fishing or to have been fishing, or preparing to fish within such Distance of such Coasts, Bays, Creeks or Harbours, within such Parts of His Majesty's Dominions in America out of the said Limits as aforesaid, all such Ships, Vessels and Boats, together with their Cargoes, and all Guns, Ammunition, Tackle, Apparel, Furniture and Stores, shall be forfeited, and shall and may be seized, taken, sued for, prosecuted, recovered and condemned by such and the like Ways, Means and Methods, and in the same Courts, as Ships, Vessels or Boats may be forfeited seized, prosecuted and condemned for any Offence against any Laws relating to the Revenue of Customs, or the Laws of Trade and Navigation, under any Act or Acts of the Parliament of Great Britain, or of the United Kingdom of Great Britain and Ireland; provided that nothing in this Act contained shall apply, or be construed to apply to the Ships or Subjects of any Prince, Power or State in Amity with His Majesty, who are entitled by Treaty with His Majesty to any Privilege of taking, drying or curing Fish on the Coasts, Bays, Creeks or Harbours, or within the Limits in this Act described.

III. Provided always, and be it enacted, That it shall and may be lawful for any Fisherman of the said United States to enter into any such Bays or Harbours of His Britannic Majesty's Dominions in America as are last mentioned, for the purpose of Shelter and repairing Damages therein, and of purchasing Wood and of obtaining Water, and for no other purpose whatever; subject nevertheless to such restrictions as may be necessary to prevent such Fishermen of the said United States from taking, drying or curing Fish in the said Bays or Harbours, or in any other manner whatever abusing the said Privileges by the said Treaty and this Act reserved to them, and as shall for that purpose be imposed by any Order or Orders to be from time to time made by His Majesty in Council under the Authority of this Act, and by any Regulations which shall be issued by the Governor or Per-

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son exercising the Office of Governor in any such Parts of His Majesty's Dominions in America, under or in pursuance of any such Order in Council as aforesaid.

IV. And be it further enacted, That if any Person or Persons, upon Requisition made by the Governor of Newfoundland, or the Person exercising the Office of Governor, or by any Governor or Person exercising the Office of Governor, in any other Parts of His Majesty's Dominions in America as aforesaid, or by any Officer or Officers acting under such Governor or Person exercising the Office of Governor, in the Execution of any Orders or Instructions from His Majesty in Council, shall refuse to depart from such Bays or Harbours; or if any Person or Persons shall refuse or neglect to conform to any Regulations or Directions which shall be made or given for the Execution of any of the Purposes of this Act; every such Person, so refusing or otherwise offending against this Act shall forfeit the Sum of Two hundred Pounds, to be recovered in the Superior Court of Judicature of the Island of Newfoundland, or in the Superior Court of Judicature of the Colony or Settlement within or near to which such Offence shall be committed, or by Bill, Plaint or Information in any of His Majesty's Courts of Record at Westminster; One Moiety of such Penalty to belong to His Majesty, His Heirs and Successors, and the other Moiety to such Person or Persons as shall sue or prosecute for the same: Provided always, that any such Suit or Prosecution, if the same be committed in Newfoundland, or in any other Colony or Settlement, shall be commenced within Three Calendar Months; and, if commenced in any of His Majesty's Courts at Westminster, within Twelve Calendar Months from the time of the Commission of such Offence.

ORDERS IN COUNCIL.

ORDER IN COUNCIL OF JUNE 19, 1819.

At the Court at Carlton House, the 19th June, 1819.

Present: His Royal Highness the Prince Regent in Council.

Whereas an Act was passed in the present session of Parliament, entitled "An Act to enable His Majesty to make regulations with respect to the taking and curing fish in certain parts of the coasts of Newfoundland, Labrador, and His Majesty's other possessions in North America, according to a Convention made between His Majesty and the United States of America," wherein it is enacted that "whereas a Convention between His Majesty and the United States of America was made and signed at London on the 20th day of October, 1818, and by the first article of the said Convention it is agreed that the inhabitants of the said United States shall have for ever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbours and creeks from Mount Joly, on the southern coasts of Labrador to and through the Straits of Belleisle, and

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thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company; and it was also by the said article of the said Convention agreed, that the American fishermen should have liberty for ever to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland above described, and of the coast of Labrador; but that so soon as the same or any portion thereof should be settled, it should not be lawful for the said fishermen to dry or cure fish at such portion so settled without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground: And whereas it is expedient that His Majesty should be enabled to carry into execution so much of the said Convention as is above recited, and to make regulations for that purpose:" "it shall and may be lawful, from and after the passing of the said Act, for His Majesty, by and with the advice of His Majesty's Privy Council, by any Order or Orders in Council to be from time to time made for that purpose to make such regulations and to give such directions, orders and instructions to the Governor of Newfoundland, or to any officer or officers on that station, or to any other person or persons whomsoever, as shall or may be from time to time deemed proper and necessary for the carrying into effect the purposes of the said Convention with relation to the taking, drying, and curing of fish by inhabitants of the United States of America in common with the British subjects, within the limits set forth in the said article of the said Convention, any Act or Acts of Parliament, or any law, custom or usage to the contrary in anywise notwithstanding." It is ordered by His Royal Highness the Prince Regent, in the name and on the behalf of His Majesty, and by and with the advice of His Majesty's Privy Council, in pursuance of the powers vested in His Majesty by the said Act, that the Governor of Newfoundland do give notice to all His Majesty's subjects being in or resorting to the said ports that they are not to interrupt in any manner the aforesaid fishery so as aforesaid allowed to be carried on by the inhabitants of the said United States in common with His Majesty's subjects on the said coasts, within the limits assigned to them by the said Treaty: and that the Governor of Newfoundland do conform himself to the said Treaty, and to such instructions as he shall from time to time receive thereon in conformity to the said Treaty, and to the above-recited Act, from one of His Majesty's Principal Secretaries of State, anything in His Majesty's Commission under the Great Seal, constituting him Governor and Commander-in-Chief in and over the said island of Newfoundland in America, and of the islands and territories thereunto belonging, or in His Majesty's general instructions to the said Governor, to the contrary notwithstanding; and His Royal Highness, in the name and on the behalf of His Majesty doth hereby annul and make void each and every of the said general instructions which are or shall be deemed contrary to the intent and meaning of the said Convention and of the said Act. And the Right Honourable Earl Bathurst, one of His Majesty's Principal Secretaries of State, is to take the necessary measures therein accordingly.

(signed) JAS. BULLER.

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ORDER IN COUNCIL, JULY 6, 1836.

At the Court at St. James.
The 6th of July, 1836.
PRESENT:
The King's Most Excellent Majesty.
Lord Chancellor.
Lord Steward.
Lord Chamberlain.
Marquis of Winchester.
Earl of Albemarle.
Earl of Minto.
Lord John Russell.
Viscount Palmerston.
Viscount Melbourne.
Viscount Howick.
Lord Glenelg.

Whereas by an Act passed by the Lieutenant Governor Council and Assembly of the Province of Nova Scotia on the 12th day of March 1836 entitled "An Act relating to the Fisheries and for the prevention of Illicit Trade in the Province of Nova Scotia and the Coast and Harbours thereof" it is amongst other things enacted, that the said act shall not go into force or be of any effect until His Majesty's assent shall be signified thereto and an Order be made by His Majesty in Council that the clauses and provisions of the said Act shall be the Rules, Regulations and Restrictions respecting the Fisheries on the Coasts, Bays, Creeks or Harbours of the Province of Nova Scotia; and whereas His Majesty hath by an Order in Council bearing date the 15th June 1836, signified His Royal Assent to the aforesaid Act by specially confirming the same; and whereas it is expedient that in pursuance of the said recited enactment the Rules, Regulations and Restrictions respecting the Fisheries in the said Act mentioned should be confirmed, His Majesty was this day pleased by and with the advice of His Privy Council and in pursuance of the said Act to declare and it is hereby accordingly declared, that the Clauses and Provisions of the aforesaid Act shall be the Rules, Regulations and Restrictions respecting the Fisheries on the Coasts, Bays, Creeks or Harbours of the Province of Nova Scotia. Whereof the Governor, Lieutenant Governor or Commander in Chief of His Majesty's Province of Nova Scotia for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

ORDER IN COUNCIL OF SEPTEMBER 9, 1907.

At the Court at Buckingham Palace.
The 9th day of September, 1907.
PRESENT:
The King's Most Excellent Majesty.
Lord President.
Lord Denman.
Sir Charles Hardinge.
Mr. Harcourt.

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Whereas, under the provisions of Article I. of a Convention concluded at London on the 20th day of October, 1818, the inhabitants of the United States of America have the liberty of taking, drying, and curing fish in common with British subjects on certain parts of the coasts of Newfoundland:

And whereas by Section I. of an Act passed in the fifty-ninth year of His late Majesty King George III. it is enacted that it shall and may be lawful for His Majesty, by and with the advice of His Majesty's Privy Council, by any order or orders in Council, to be from time to time made for that purpose, to make such regulations, and to give such directions, orders, and instructions to the Governor of Newfoundland, or to any officer or officers on that station, or to any person or persons whomsoever, as shall or may be from time to time deemed proper and necessary for the carrying into effect the purposes of the said Convention with relation to the taking, drying, and curing of fish by the inhabitants of the United States of America, in common with British subjects, within the limits set forth in the said Article of the said Convention, any Act or Acts of Parliament, or any law, custom, or usage to the contrary notwithstanding;

And whereas by an Order in Council made on the 19th June, 1819, in pursuance of the powers vested in His Majesty by the said Act, certain directions were given to the Governor of Newfoundland,

And whereas His Majesty by and with the advice of His Majesty's Privy Council deems it proper and necessary for the carrying into effect the purposes of the said Convention, to give further directions with relation to the taking, drying, and curing of fish by the inhabitants of the United States of America in common with British subjects on the coasts of Newfoundland:

Now therefore, His Majesty, in pursuance of the powers vested in His Majesty by Section I. of the Act 59 George III., cap. 38, by and with the advice of His Majesty's Privy Council is pleased to order and it is hereby ordered as follows:—

I. No provisions, rules, or enactments which may be in force with regard to the boarding and bringing into port of foreign fishing vessels found in the waters of Newfoundland shall, within the limits prescribed by the said Convention of 1818, apply to vessels in which inhabitants of the United States of America resort to the waters of Newfoundland for the purpose of exercising the liberty assured to them by Article I. of the said Convention.

II. If any question should arise before any Magistrate, Justice of the Peace, Judge or Court in Newfoundland, in relation to, concerning, or in anywise in respect of the presence on board any such vessel of any caplin, squid, or other bait fishes, or of ice, lines, seines, or other outfit or supplies for the fishery, the burden of proof that the said bait fishes and supplies and outfits have been purchased within the waters of Newfoundland shall rest upon the person or persons alleging the same.

III. It shall not be lawful for any person without the consent of His Majesty's Senior Naval Officer on the Newfoundland Station, in any proceedings against inhabitants of the United States exercising or claiming to exercise the liberty to take fish assured to them by the First Article of the Convention of 1818, or against any of their boats or vessels or against any persons engaged by them to form part of

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the crew of the vessels used or employed by such inhabitants in the exercise of such right.

A. To serve any process of law upon any boat or vessel so used or employed for any act or thing done in the exercise or alleged exercise of the said right. or which may, in the opinion of the said Naval Officer, give rise to any question or dispute in relation to the common fishery established or referred to in the said Convention, or to go on board any such vessel or boat for the purpose of serving such a process.

B. To arrest or seize any such vessel or boat or to seize, remove, or disturb any gear, nets, apparel, or other furniture or stores belonging to such vessel or boat.

IV. This Order shall commence and come into operation forthwith.

V. The Governor of Newfoundland, His Majesty's Senior Naval Officer on the Newfoundland Station, all Judges, Magistrates, Justices of the Peace, Constables, and all other persons whatsoever in Newfoundland shall take notice hereof and govern themselves accordingly.

A. W. FITZROY.

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MARITIME PROVINCES.

STATUTES.

NOVA SCOTIA ACT OF MARCH 12, 1836.

(6 Wm. IV, chap. 8.)

AN ACT Relating to the fisheries, and for the prevention of illicit trade in the province of Nova Scotia and the coasts and harbors thereof.

Whereas, by the convention made between his late Majesty, King George the Third, and the United States of America, signed at London on the twentieth day of October, in the year of our Lord one thousand eight hundred and eighteen, and the statute made and passed in the Parliament of Great Britain in the fifty-ninth year of the reign of his late Majesty, King George the Third, all foreign ships, vessels or boats, or any ships vessel or boat, other than such as shall be navigated according to the laws of the United Kingdom of Great Britain and Ireland, found fishing, or to have been fishing, or preparing to fish within certain distances of any coasts, bays, creeks or harbors whatever, in any part of his Majesty's dominions in America, not included within the limits specified in the first article of the said convention, are liable to seizure:

Whereas the United States did, by the said Convention, renounce forever any liberty enjoyed or claimed by the inhabitants thereof to take, dry or cure fish on or within three marine miles of any of the coasts, bays, creeks or harbors of his Britannic Majesty's dominions in America not included within the above mentioned limits; Provided, however, That the American fishermen should be admitted to enter such bays or harbours for the purpose of shelter, and of repairing damages therein, of purchasing wood and of obtaining water, and for no other purpose whatever, but under such restrictions as might be necessary to prevent their taking drying or curing fish therein, or in any other manner whatever abusing the privileges thereby reserved to them; and whereas no rules or regulations have been made for such purpose, and the interests of the inhabitants of this province are materially impaired; and whereas the said act does not designate the persons who are to make such seizure as aforesaid, and it frequently happens that persons found within the distance of the coasts aforesaid, infringing the articles of the convention aforesaid, and the enactments of the statute aforesaid, on being taken possession of, profess to have come within said limits for the purpose of shelter, and repairing damages therein, or to purchase wood and obtain water, by which the law is evaded, and the vessels and cargoes escape confiscation, although the cargoes may be evidently intended to be smuggled into this province, and the fishery carried on contrary to said convention and statute.

I. Be it therefore enacted by the Lieutenant Governor, Council and Assembly, That from and after the passage of this act, it shall

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be lawful for the officers of his Majesty's customs, the officers of impost and excise, the sheriffs and magistrates throughout the province, and any person holding a commission for that purpose from his excellency the Lieutenant Governor, for the time being, to go on board any ship, vessel or boat, within any port, bay, creek or harbor in this province; and also, to go on board of any ship, vessel or boat, hovering within three marine miles of any of the coasts, bays, creeks or harbors thereof, and in either case freely to stay on board such ship, vessel or boat, as long as she shall remain within such port or distance; and if any such ship, vessel or boat be bound elsewhere, and shall continue so hovering for the space of twenty-four hours after the master shall have been required to depart, it shall be lawful for any of the above enumerated officers or persons to bring such ship, vessel or boat into port, and to search and examine her cargo, and to examine the master on oath touching the cargo and voyage, and if there be any goods on board prohibited to be imported into the province, such ship, vessel or boat, and the cargo laden on board thereof, shall be forfeited; and if the said ship, vessel or boat shall be foreign, and not navigated according to the laws of Great Britain and Ireland, and shall have been found fishing or preparing to fish, or to have been fishing within such distance of such coasts, bays, creeks or harbors of this province, such ship, vessel or boat, and their respective cargoes, shall be forfeited; and if the master, or person in command thereof, shall not truly answer the questions which shall be demanded of him in such examination, he shall forfeit the sum of one hundred pounds.

II. And be it further enacted, That all goods, ships, vessels and boats liable to forfeiture under this act, shall and may be seized and secured by any such officer of his Majesty's customs, officer of impost and excise, sheriffs, magistrates or other person holding such commission, as aforesaid; and every person who shall in any way oppose, molest or obstruct any officer of the customs, officers of impost and excise, sheriff, magistrate, or other person so commissioned and employed as aforesaid, in the exercise of his office, or shall in any way oppose, molest or obstruct any person acting in aid or assistance of such officer of the customs, officers of impost and excise, sheriff, magistrate, or other person so commissioned and employed as aforesaid, shall, for every such offence, forfeit the sum of two hundred pounds.

III. And be it further enacted, That all goods, ships, vessels and boats which shall be seized as being liable to forfeiture under this act, shall be taken forthwith and delivered into the custody of the collector and comptroller of the customs, at the custom-house next to the place where the same were seized, who shall secure and keep the same in such manner as other vessels and goods seized are directed to be secured by the commissioners of his Majesty's customs.

IV. And be it further enacted, That all goods, ships, vessels, boats or other thing, which shall have been condemned as forfeited under this act, shall, under the direction of the principal officer of the customs or excise where such seizures shall have been secured, be sold by public auction to the best bidder, and the produce of such sale shall be applied as follows, that is to say: the amount chargeable for the custody of said goods, ship, vessel, boat or any other thing so seized as aforesaid, shall be first deducted and paid, and the residue

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divided into two equal moieties, one of which shall be paid to the officer or other person or persons legally seizing the same, without deduction, and the other moiety to the government, and paid into the treasury of this province, all costs incurred having been first deducted therefrom. Provided always, That it shall be lawful for the commissioners of the revenue to direct that any of such things shall be destroyed or reserved for the public service.

V. And be it further enacted, That all penalties and forfeitures which may be hereafter incurred under this act, shall and may be prosecuted, sued for and recovered in the court of vice-admiralty having jurisdiction in this province.

VI. And be it further enacted, That if any goods, or any ship, vessel or boat, shall be seized as forfeited under this act, it shall be lawful for the judge or judges of any court having jurisdiction to try and determine such seizure, with the consent of the person seizing the same, to order the delivery thereof, on security by bond, with two sufficient sureties to be first approved by such seizing officer or person, to answer double the value of the same in case of condemnation, and such bond shall be taken to the use of his Majesty, in the name of the collector of the customs in whose custody the goods or ship, vessel or boats may be lodged, and such bond shall be delivered and kept in the custody of such collectors; and in case the goods or the ship, vessel or boat shall be condemned, the value thereof shall be paid into the hands of such collector, who shall cancel such bond, and distribute the money paid in such manner as above directed.

VII. And be it further enacted, That no suit shall be commenced for the recovery of any penalty or forfeiture under this act, except in the name of his Majesty, and shall be prosecuted by his Majesty's advocate or attorney general, or, in his absence, by the solicitor general for this province; and if any question shall arise, whether any person is an officer of the customs or excise, sheriff, magistrate, or other person authorized to seize as aforesaid, viva voce evidence may be given of such facts, and shall be deemed legal and sufficient evidence.

VIII. And be it further enacted, That if any goods, ship, vessel or boat shall be seized for any cause of forfeiture under this act, and any dispute shall arise whether the same have been lawfully seized, the proof touching the illegality thereof shall lie on the owner or claimant of such goods, ship, vessel or boat, and not on the officer or person who shall seize and stop the same.

IX. And be it further enacted, That no claim to anything seized under this act, and returned into his Majesty's court of vice-admiralty for adjudication, shall be admitted, unless such claim be entered in the name of the owner, with his residence and occupation, nor unless oath to the property in such thing be made by the owner or by his attorney or agent by whom such claim shall be entered, to the best of his knowledge and belief; and every person making a false oath thereto shall be deemed guilty of a misdemeanor, and shall be liable to the pains and penalties to which persons are liable for a misdemeanor.

X. And be it further enacted, That no person shall be admitted to enter a claim to anything seized in pursuance of this act, and prosecuted in this Province, until sufficient security shall have been given in the court where such seizure is prosecuted, in a penalty not exceed-

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ing sixty pounds, to answer and pay the costs occasioned by such claim; and in default of giving such security, such things shall be adjudged to be forfeited, and shall be condemned.

XI. And be it further enacted, That no writ shall be sued out against nor a copy of any process served upon any officer of the customs or excise, sheriff, magistrate, or other person authorized to seize as aforesaid, for anything done in the exercise of his office, until one calendar month after notice in writing shall have been delivered to him or left at his usual place of abode by the attorney or agent of the party who intends to sue out such writ or process, in which notice shall be clearly and explicitly contained the cause of action, the name and place of abode of the person who is to bring such action, and the name and place of abode of the attorney or agent, and no evidence of the cause of such action shall be produced, except of such as shall be contained in such notice, and no verdict shall be given for the plaintiff unless he shall prove on the trial that such notice was given; and in default of such proof, the defendant shall receive in such action a verdict and costs, or judgment of nonsuit shall be awarded against the plaintiff, as the court shall direct.

XII. And be it further enacted, That every such action shall be brought within three calendar months after the cause thereof, and shall be laid and tried in any of his Majesty's courts of record in this Province, and the defendant may plead the general issue, and give the special matter in evidence; and, if the plaintiff shall become nonsuited, or shall discontinue the action, or if, upon a verdict or demurrer, judgment shall be given against the plaintiff, the defendant shall receive treble costs, and have such remedy for the same as any defendant can have in other cases where costs are given by law.

XIII. And be it further enacted, That in case any information or suit shall be brought to trial on account of any seizure made under this act, and a verdict shall be found for the claimant thereof, and the judge or court before whom the cause shall have been tried shall certify on the record that there was probable cause of seizure, the claimant shall not be entitled to any costs of suit, nor shall the person who made such seizure be liable to any action, indictment, or other suit or prosecution on account of such seizure, and if any action, indictment or other suit or prosecution shall be brought to trial against any person on account of such seizure, wherein a verdict shall be given against the defendant, the plaintiff, besides the thing seized, or the value thereof, shall be entitled to no more than two pence damages, nor to any costs of suit, nor shall the defendant in such prosecution be fined more than one shilling.

XIV. And be it further enacted, That it shall be lawful for any such officer of the customs or excise, or sheriff, or magistrate, or other person authorized to seize as aforesaid, within one calendar month after such notice, to tender amends to the party complaining, or his agent, and to plead such tender in bar to any action, together with other pleas; and if the jury shall find the amends sufficient they shall give a verdict for the defendant; and, in such case, or in case the plaintiff shall become nonsuit, or shall discontinue his action, or judgment shall be given for the defendant upon demurrer, then such defendant shall be entitled to the like costs as he would have been entitled to in case he had pleaded the general issue only: Provided always, That it shall be lawful for such defendant, by leave

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of the court where such action shall be brought, at any time before or after the issue joined, to pay money into court as in other actions.

XV. And be it further enacted, That in any such action, if the judge or court before whom such action shall be tried, shall certify upon the record that the defendant or defendants in such action acted upon probable cause, then the plaintiff in such action shall not be entitled to more than two pence damages, nor to any costs of suit.

XVI. And be it further enacted, That all actions or suits for the recovery of any of the penalties or forfeitures imposed by this act, may be commenced or prosecuted at any time within three years after the offence committed, by reason whereof such penalty or forfeiture shall be incurred, any law, usage or custom to the contrary notwithstanding.

XVII. And be it further enacted, That no appeal shall be prosecuted from any decree or sentence of any of his Majesty's courts in this province, touching any penalty of forfeiture imposed by this act, unless the inhibition shall be applied for and decreed within twelve months from the time when such decree or sentence was pronounced.

XVIII. And be it further enacted, That this act shall not go into force or be of any effect until his Majesty's assent shall be signified thereto, and an order made by his Majesty, in council, that the clauses and provisions of this act shall be the rules, regulations and restrictions respecting the fisheries on the coasts, bays, creeks or harbors of the province of Nova Scotia.

NOVA SCOTIA REVISED STATUTES, 1851, CHAPTER 94.

OF THE COAST FISHERIES.

1. Officers of the colonial revenue, sheriffs, magistrates, and any other person duly commissioned for that purpose, may go on board any vessel or boat within any harbor in the province, or hovering within three marine miles of any of the coasts or harbors thereof, and stay on board so long as she may remain within such place or distance.

2. If such vessel or boat be bound elsewhere and shall continue within such harbor, or so hovering for twenty-four hours after the master shall have been required to depart, any one of the officers above mentioned may bring such vessel or boat into port and search her cargo, and also examine the master upon oath touching the cargo and voyage, and if the master or person in command shall not truly answer the questions demanded of him in such examination he shall forfeit one hundred pounds; and if there be any prohibited goods on board, then such vessel or boat, and the cargo thereof, shall be forfeited.

3. If the vessel or boat shall be foreign and not navigated according to the laws of Great Britain and Ireland, and shall have been found fishing or preparing to fish or to have been fishing within three marine miles of such coasts or harbors, such vessel or boat, and the cargo, shall be forfeited.

4. All goods, vessels and boats liable to forfeiture may be seized and secured by any of such officers or persons so commissioned, and every person opposing them, or any one aiding such opposition, shall forfeit two hundred pounds.

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5. Goods, vessels and boats, seized as liable to forfeiture under this chapter, shall be forthwith delivered into the custody of the officers of the colonial revenue next to the place where seized, to be secured and kept as other vessels, boats, and goods seized, are directed to be secured and kept by law.

6. All goods, vessels, and boats, condemned as forfeited under this chapter, shall, by direction of the principal officer of the colonial revenue where the seizure shall have been secured, be sold at public auction, and the produce of such sale shall be applied as follows: the amount chargeable for the custody of the property seized shall first be deducted, and paid over for that service, one half of the remainder shall be paid to the officer or person seizing the same without deduction, and the other half, after first deducting therefrom all costs incurred, shall be paid into the treasury of the province; but the board of revenue may nevertheless direct that any vessel, boat or goods, seized and forfeited, shall be destroyed or reserved for the public service.

7. All penalties and forfeitures hereunder shall be prosecuted and recovered in the court of vice admiralty.

8. If any goods, vessel or boat, shall be seized as forfeited under this chapter, the judge of the vice-admiralty, with the consent of the persons seizing the same, may order re-delivery thereof, on security by bond, to be made by the party, with two sureties, to the use of her majesty. In case the property shall be condemned, the value thereof shall be paid into the court, and distributed as above directed.

9. All suits for the recovery of penalties or forfeitures shall be in the name of her majesty, and shall be prosecuted by the advocate general, or in case of his absence by the solicitor general. If a dispute arise whether any person is authorized to seize under this chapter, oral evidence may be heard thereupon.

10. If any seizure take place under this chapter, and a dispute arise, the proof touching the illegality thereof shall be upon the owner or claimant.

11. No claim to any thing seized under this chapter, and returned into the court of vice admiralty for adjudication, shall be admitted, unless the claim be entered under oath, with the name of the owner, his residence and occupation, and the description of the property claimed, which oath shall be made by the owner, his attorney or agent, and to the best of his knowledge and belief.

12. No person shall enter a claim to any thing seized under this chapter until security shall have been given in a penalty not exceeding sixty pounds to answer and pay costs occasioned by such claim, and in default of such security the things seized shall be adjudged forfeited and shall be condemned.

13. No writ shall be sued out against any officer or other person authorized to seize under this chapter for any thing done thereunder, until one month after notice in writing, delivered to him or left at his usual place of abode by the person intending to sue out such writ, his attorney or agent in which notice shall be contained the cause of action, the name and place of abode of the person who is to bring the action, and of his attorney or agent, and no evidence of any cause of action shall be produced except such as shall be contained in such notice.

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14. Every such action shall be brought within three months after the cause thereof has arisen.

15. If on any information or suit brought to trial under this chapter on account of any seizure, judgment shall be given for the claimant, and the judge or court shall certify on the record that there was probable cause of seizure, the claimant shall not recover costs, nor shall the person who made the seizure be liable to any indictment or suit on account thereof. And if any suit or prosecution be brought against any person on account of such seizure and judgment shall be given against him and the judge or court shall certify that there was probable cause for the seizure, then the plaintiff besides the thing seized or its value shall not recover more than two pence damages nor any costs of suit, nor shall the defendant be fined more than one shilling.

16. The seizing officer may within one month after notice of action received tender amends to the party complaining or his attorney or agent, and plead such tender.

17. All actions for the recovery of penalties or forfeitures imposed by this chapter must be commenced within three years after the offence committed.

18. No appeal shall be prosecuted from any decree or sentence of any court in this province, touching any penalty or forfeiture imposed hereby, unless the inhibition be applied for and decreed within twelve months from the decree or sentence being pronounced.

19. All coasting vessels under sixty tons burthen, owned in this province, and engaged in the coasting trade thereof, shall be furnished with a narrow piece of plank or iron affixed to the bottom of the keel and level therewith, extending aft at least six inches beyond the aperture between the stern post and rudder, and well secured on the keel. But this section shall not extend to vessels in which the main or false keel extends six inches beyond the aperture between the stern post and rudder.

20. Any owner or master of a coasting vessel not so furnished or built, running foul of any net set off the harbors, bays and rivers of the coast, shall, upon due proof thereof, forfeit five pounds, to be recovered by the party injured to his own use as a private debt, leaving to the party grieved, nevertheless, his rights at common law for any further damage.

21. In this chapter "vessels" shall include ships, and "harbors" shall include ports, bays and creeks.

NOVA SCOTIA ACT OF MAY 7, 1866.

(29 Vict., cap. 35.)

AN ACT To amend Chapter 94 of the Revised Statutes, "Of the Coast and Deep Sea Fisheries."

Be it enacted by the Governor, Council and Assembly, as follows:

1. Section 4 of chapter 94 of the Revised Statutes is hereby amended as follows:—"And shall be guilty of a misdemeanor, and upon conviction be liable to imprisonment for a term not exceeding two years."

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2. Section 5 of the said chapter is hereby amended by the addition of the following words:—"Or into such other custody and keeping as the Governor in Council or Court of Vice Admiralty shall order."

3. In cases of seizure under the said Act, the Governor in Council may, by order, direct a stay of proceedings; and in cases of condemnation, may relieve from the penalty in whole or in part, and on such terms as may be deemed right.

NEW BRUNSWICK ACT OF MAY 3, 1853.

(16 Vict., cap. 69.)

AN ACT Relating to the Coast Fisheries, and for the Prevention of Illicit Trade. (Assented to October 24, 1853.)

Be it enacted, &c., as follows:

I. Officers of the Provincial Treasury, and any other person duly appointed by the Lieutenant-Governor in Council for that purpose, may go on board any vessel or boat within any harbour in this province, or hovering within three marine miles of any of the coasts, or any harbours thereof, and stay on board so long as she may remain within such place or distance.

II. If such vessel or boat be bound elsewhere, and shall continue within such harbour or so hovering for twenty-four hours after the master shall have been required to depart, any one of the officers or persons above mentioned may bring such vessel or boat into port, and search her cargo, and also examine the master upon oath; and if the master or person in command shall not truly answer the questions demanded of him in such examination, he shall forfeit one hundred pounds; and if there be any prohibited goods on board, then such vessel or boat, and the cargo thereof, shall be forfeited.

III. If the vessel or boat shall be foreign, and not navigated according to the laws of Great Britain and Ireland, and shall be found fishing, or to have been fishing, or preparing to fish, within three marine miles of such coasts or harbours, such vessel or boat, and the cargo, shall be forfeited.

IV. All goods, vessels, and boats liable to forfeiture may be seized and secured by any of such officers or persons so appointed; and every person opposing them, or any one aiding such opposition, shall forfeit two hundred pounds.

V. Goods, vessels, and boats seized as liable to forfeiture under this Act, shall be forthwith delivered into the custody of the officers of the Provincial Revenue next to the place where seized, to be secured and kept as other vessels, boats and goods seized are directed to be secured and kept by law.

VI. All goods, vessels, and boats condemned as forfeited under this Act shall, by direction of the principal officer of the Provincial Revenue where the seizure shall have been secured, be sold at public auction, and the produce of such sale shall be applied as follows: the amount chargeable for the custody of the property seized shall first be deducted, and paid over for that service; one-half of the remainder shall be paid to the officer or person seizing the same, without deduction: and the other half, after first deducting therefrom all costs incurred, shall be paid into the Treasury of this Province; but the

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Lieutenant-Governor in Council may nevertheless direct that any vessel, boat or goods seized and forfeited shall be reserved for the public service or destroyed.

VII. All penalties and forfeitures imposed by this Act shall be prosecuted and recovered in the Supreme Court.

VIII. If any goods, vessel, or boat shall be seized as forfeited under this Act, the Judge of the said Court, with the consent of the persons seizing the same, may order re-delivery thereof on security by bond to Her Majesty, to be made by the party claiming the same with two sureties. In case the property is condemned, the value thereof shall be paid into the Court, and distributed as above directed.

IX. All suits for recovery of penalties or forfeitures shall be in the name of Her Majesty, and shall be prosecuted by the Attorney-General, or, in his absence, by the Solicitor-General. If a dispute arise whether any person is authorized to seize under this Act, oral evidence may be heard thereupon.

X. If any seizure take place under this Act, and a dispute arise, the proof touching the illegality shall be upon the owner or claimant.

XI. No claim to anything seized under this Act, and returned into the said Court for adjudication, shall be admitted unless the claim be entered under oath, with the name of the owner, his residence and occupation, and the description of the property claimed, which oath shall be made by the owner, his attorney, or agent, and to the best of his knowledge and belief, before any Justice of the Peace.

XII. No person shall enter a claim to anything seized under this Act, until security shall have been given in a penalty not exceeding sixty pounds, to answer and pay costs occasioned by such claim, and in default of such security the things seized shall be adjudged forfeited, and shall be condemned.

XIII. No writ shall be sued out against any officer or other person authorized to seize under this Act, for anything done thereunder, until one month after notice in writing delivered to him or left at his usual place of abode by the person intending to sue out such writ, his attorney or agent, in which notice shall be contained the cause of action, the name and place of abode of person who is to bring the action, and of his attorney or agent; and no evidence of any cause of action shall be admitted, except such as shall be contained in the notice.

XIV. Every such action shall be brought within three months after the cause thereof has arisen.

XV. If on any information or suit brought to trial under this Act, on account of any seizure, judgment shall be given for the claimant, and the judge or court shall certify on the record that there was probable cause of seizure, the claimant shall not recover costs, and the person who made the seizure shall not be liable to any indictment or suit on account thereof. And if any suit or prosecution be brought against any person on account of such seizure, and judgment shall be given against him, and the Judge or Court shall certify there was probable cause for the seizure, then the plaintiff, besides the thing seized or its value, shall not recover more than two pence damages, and no costs of suit; and the defendant shall not be fined more than one shilling.

XVI. The seizing officer may, within one month after notice of action received, tender amends to the party complaining, or his attorney or agent, and plead such tender.

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XVII. All actions for the recovery of penalties or forfeitures imposed by this Act must be commenced within three years after the offence committed.

XVIII. No appeal shall be prosecuted from any decree or sentence of any Court in this province, touching any penalty or forfeiture hereby imposed, unless the inhibition be applied for, and decreed, within twelve months from the decree or sentence being pronounced.

PRINCE EDWARD ISLAND ACT OF APRIL 15, 1843.

(6 Vict., cap. 14.)

AN ACT Relating to the Fisheries, and for the Prevention of Illicit Trade in Prince Edward Island, and the Coasts and Harbors thereof.

Whereas by the Convention made between His late Majesty King George the Third and the United States of America, signed at London on the twentieth day of October, in the year of Our Lord, one thousand eight hundred and eighteen, and the statute made and passed in the Parliament of Great Britain, in the fifty-ninth year of the reign of His late Majesty King George the Third, all foreign ships, vessels, or boats, or any ship, vessel or boat, other than such as shall be navigated according to the laws of the United Kingdom of Great Britain and Ireland, found fishing, or to have been fishing, or preparing to fish, within certain distances of any coasts, bays, creeks, or harbours whatever, in any part of His Majesty's dominions in America, not included within the limits specified in the first Article of the said Convention, are liable to seizure: and whereas the United States did, by the said Convention, renounce for ever any liberty enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks or harbours of His Britannic Majesty's dominions in America, not included within the abovementioned limits: provided however that the American fishermen should be admitted to enter such bays or harbours for the purpose of shelter, and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purposes whatever, but under such restrictions as might be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges thereby reserved to them: and whereas no rules or regulations have been made for such purpose, and the interests of the inhabitants of this Island are materially impaired: and whereas the said act does not designate the persons who are to make such seizure as aforesaid, and it frequently happens that persons found within the distances of the coasts aforesaid, infringing the Articles of the Convention aforesaid, and the enactments of the statute aforesaid, on being taken possession of, profess to have come within said limits for the purpose of shelter and repairing damages therein, or to purchase wood or obtain water, by which the law is evaded, and the vessels and cargoes escape confiscation, although the cargoes may be evidently intended to be smuggled into this Island, and the fishery carried on contrary to the said Convention and statute: Be it therefore enacted by the Lieutenant-Governor, Council, and Assembly, that from and after the passing of this Act, it shall be lawful for the officers of Her Majesty's Customs, the officers of Impost and Excise, the Sheriffs and Magistrates throughout

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this Island, and any person holding a commission for that purpose from His Excellency the Lieutenant-Governor, for the time being, to go on board of any ship, vessel or boat within any bay, port, creek, or harbour in this Island, and also to go on board any ship, vessel, or boat, hovering within three marine miles of any of the coasts, bays, creeks, or harbours thereof, and in either case freely to stay on board such ship, vessel, or boat as long as she shall remain within such port or distance, and if any such ship, vessel, or boat be bound elsewhere, and shall continue so hovering for the space of twenty-four hours after the master shall have been required to depart, it shall be lawful for any of the above enumerated officers or persons to bring such ship, vessel, or boat into port and to search and examine her cargo, and to examine the master upon oath, touching the cargo and voyage; and if there be any goods on board prohibited to be imported into this Island, such ship, vessel or boat, and the cargo laden on board thereof, shall be forfeited; and if the said ship, vessel or boat shall be foreign, and not navigated according to the law of Great Britain and Ireland, and shall have been found fishing, or preparing to fish, or to have been found fishing, within such distance of such coasts, bays, creeks, or harbours of this Island, such ship vessel or boat, and their respective cargoes, shall be forfeited, and if the master or person in command thereof shall not truly answer the questions which shall be demanded of him in such examination, he shall forfeit the sum of one hundred pounds.

II. And be it further enacted, that all goods ships, vessels, and boats, liable to forfeiture under this Act, shall and may be seized and secured by any such officer of Her Majesty's Customs, officer of Impost and Excise, Sheriffs, Magistrates, and other person holding such commission as aforesaid, and any person who shall in any way oppose, molest, or obstruct any officer of the Customs, officer of Impost and Excise, Sheriff, Magistrate, or other person so commissioned and employed as aforesaid, in the exercise of his office, or shall in any way oppose, molest, or obstruct any person acting in aid or assistance of such officer of Customs, officer of Impost and Excise, Sheriff, Magistrate or other person so commissioned and employed as aforesaid, shall, for every such offence, forfeit the sum of two hundred pounds.

III. And be it further enacted, that all goods, ships, vessels and boats, which shall be seized as being liable to forfeiture under this Act, shall be taken forthwith and delivered into the custody of the Collector of Customs, at the Custom-house next to the place where the same were seized, who shall secure and keep the same in such manner as other vessels and goods seized are directed to be secured by the Commissioners of Her Majesty's Customs.

IV. And be it further enacted, that all goods, ships, vessels, boats, or other things, which shall have been condemned as forfeited under this Act, shall, under the direction of the principal officer of the Customs or Excise, where such seizure shall have been secured, be sold by public auction to the best bidder, and the produce of such sale to be applied as follows, that is to say: the amount chargeable for the custody of said goods, ship, vessel, boat, or any other thing so seized as aforesaid, shall be first deducted and paid, and the residue divided into two equal moieties—one of which shall be paid to the officer or other person or persons legally seizing same, without deduction, and the other moiety to the Government, and paid into

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the Treasury of this Island—all costs incurred having been first deducted therefrom: provided always, that it shall be lawful for the Lieutenant-Governor in Council to direct that any of such things shall be destroyed, or reserved for the public service.

V. And be it further enacted, that all penalties and forfeitures which may be hereafter incurred under this Act shall and may be prosecuted, sued for, and recovered, in the Court of Vice-Admiralty having jurisdiction in this island.

VI. And be it further enacted, that if any goods, or any ship vessel, or boat shall be seized, as forfeited under this Act, it shall be lawful for the Judge or Judges of any Court having jurisdiction to try and determine such seizures, with the consent of the person seizing the same, to order the delivery thereof, on security, by bond, with two sufficient sureties, to be first approved by such seizing officer or person, to answer double the value of the same in case of condemnation, and such bonds shall be taken to the use of Her Majesty, in the name of the Collector of the Customs, in whose custody the goods, or ship, vessel or boat may be lodged, and such bond shall be delivered and kept in the custody of such Collector; and in case the goods, or ship, vessel, or boat shall be condemned, the value thereof shall be paid into the hands of such Collector, who shall cancel such bond, and distribute the money paid in such manner as is above directed.

VII. And be it further enacted, that no suit shall be commenced for the recovery of any penalty or forfeiture under this Act, except in the name of Her Majesty, and shall be prosecuted by Her Majesty's Advocate or Attorney-General, or in his absence, by the Solicitor-General, for this Island; and if any questions shall arise, whether any person is an officer of the Customs, Excise, Sheriff, Magistrate, or other person authorized to seize as aforesaid, viva voce evidence may be given of such fact, and it shall be deemed legal and sufficient evidence.

VIII. And be it further enacted, that if any goods, ship, vessel, or boat shall be seized for any cause or forfeiture under this Act, and any dispute shall arise whether the same have been lawfully seized, the proof touching the illegality thereof shall be on the owner or claimant of such goods, ship, vessel, or boat, and not on the officer or person who shall seize and stop the same.

IX. And be it further enacted, that no claim to anything seized under this Act and returned into Her Majesty's Court of Vice-Admiralty for adjudication, shall be admitted, unless such claim be entered in the name of the owner, with his residence and occupation, nor unless oath to the property in such thing be made by the owner, or by his attorney or agent, by whom such claim shall be entered, to the best of his knowledge and belief, and every person making a false oath thereto shall be deemed guilty of a misdemeanor, and shall be liable to the pains and penalties to which persons are liable for a misdemeanor.

X. And be it further enacted, that no person shall be admitted to enter a claim to anything seized in pursuance of this Act, and prosecuted in this island, until sufficient security shall have been given in the Court where such seizure is prosecuted in a penalty not exceeding sixty pounds, to answer and pay the costs occasioned by such claim, and in default of giving such security, such things shall be adjudged to be forfeited, and shall be condemned.

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XI. And be it further enacted, that no writ shall be sued out against, nor a copy of any process served upon any officer of the Customs, Excise, Sheriff, Magistrate or other person authorized to seize as aforesaid, for anything done in the exercise of this office, until one calendar month after notice, in writing, shall have been delivered to him, or left at his usual place of abode, by the attorney or agent of the party who intends to sue out such writ or process, in which notice shall be clearly and explicitly contained the cause of action, and the name and place of abode of the person who is to bring such action, and the name and place of abode of the attorney or agent, and no evidence of the cause of such action shall be produced, except of such as shall be contained in such notice, and no verdict shall be given for the plaintiff unless he shall prove on the trial that such notice was given, and, in default of such proof, the defendant shall receive in such action a verdict and costs, or judgment of non-suit shall be awarded against the plaintiff, as the Court shall direct.

XII. And be it further enacted, that every such action shall be brought within three calendar months after the cause thereof, and shall be laid and tried in Her Majesty's Supreme Court of Judicature for this island, and the defendant may plead the general issue, and give the special matter in evidence: and if the plaintiff shall become nonsuited, or shall discontinue the action, or, if upon a verdict of demurrer, judgment shall be given against the plaintiff, the defendant shall receive treble costs, and have such remedy for the same as any defendant can have in other cases where costs are given by law.

XIII. And be it further enacted, that in case any information or suit shall be brought to trial, on account of any seizure made under this Act, and a verdict shall be found for the claimant therefore, and the Judge or Court before whom the cause shall have been tried, shall certify on the record that there was probable cause of seizure, the claimant shall not be entitled to any costs of suit, nor shall the person who made such seizure be liable to any action, indictment, or other suit or prosecution on account of any such seizure; and if any such action, indictment, or other suit or prosecution shall be brought to trial against any person on account of such seizure, wherein a verdict shall be given against the defendant, the plaintiff, besides the things seized or the value thereof, shall be entitled to no more than two pence damages, nor to any costs of suit, nor shall the defendant in such prosecution be fined more than one shilling.

XIV. And be it further enacted, that it shall be lawful for any such officer of the Customs, Excise, or Sheriff, or Magistrate, or other person authorized to seize as aforesaid, within one calendar month after such notice, to tender amends to the party complaining, or his agent, and to plead such tender in bar to any action, together with other pleas, and if the jury shall find the amends sufficient, they shall give a verdict for the defendant, and in such case, or in case the plaintiff shall become nonsuit, or shall discontinue his action, or judgment shall be given for the defendant upon demurrer, then such defendant shall be entitled to the like costs as he would have been entitled to in case he had pleaded the general issue only; provided always, that it shall be lawful for such defendant, by leave of the Court where such action shall be brought, at any time before or after such issue joined, to pay money into Court as in other actions.

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XV. And be it further enacted, that in any such action, if the Judge or Court before whom such action shall be tried, shall certify upon the record that the defendant or defendants in such action acted upon probable cause, then the plaintiff in such action shall not be entitled to more than two pence damages, nor to any costs of suit.

XVI. And be it further enacted, that all actions or suits for the recovery of any of the penalties or forfeitures imposed by this Act may be commenced or prosecuted at any time within three years after the offence was committed by reason whereof such penalties or forfeitures shall be incurred, any law, usage, or custom to the contrary notwithstanding.

XVII. And be it further enacted, that no appeal shall be prosecuted from any decree or sentence of any of Her Majesty's Courts in this island, touching any penalty or forfeiture imposed by this Act, unless the inhibition shall be applied for and decreed within twelve months from the time when such decree or sentence was pronounced.

XVIII. And be it further enacted, that this Act shall not go into force or be of any effect until Her Majesty's assent shall be signified thereto, and an order made by Her Majesty in Council, that the clauses and provisions of this Act shall be the rules, regulations, and restrictions respecting the fisheries on the coasts, bays, creeks or harbours of the Island of Prince Edward.

BRITISH ORDER IN COUNCIL OF SEPTEMBER 3, 1844, ASSENTING TO THE PRINCE EDWARD ISLAND ACT OF APRIL 15, 1843.

(6 Vict., cap. 14.)

At the Court at Windsor, the 3d September, 1844.

Present: The Queen's Most Excellent Majesty in Council.

Whereas by an Act passed by the Lieutenant-Governor, Council, and Assembly of Prince Edward Island, on the 15th of April, 1843, entituled "An Act relating to the Fisheries, and for the Prevention of Illicit Trade in Prince Edward Island, and the Coasts and Harbours thereof," it is amongst other things enacted that the said Act shall not go into force or be of any effect until Her Majesty's assent shall be signified thereto, and an Order be made by Her Majesty in Council that the clauses and provisions of the said Act shall be the rules, regulations, and restrictions respecting the fisheries on the coasts, bays, creeks, or harbours of the Island of Prince Edward: And whereas Her Majesty hath, by an Order in Council, bearing even date therewith, signified Her Royal assent to the aforesaid Act, by specially confirming the same: And whereas it is expedient that, in pursuance of the said recited Act, the rules, regulations, and restrictions respecting the fisheries in the said Act mentioned, should be confirmed, and Her Majesty was this day pleased, by and with the advice of Her Privy Council, and in pursuance of the said Act, to declare, and it is hereby accordingly declared, That the clauses and provisions of the aforesaid Act, shall be the rules, regulations and restrictions respecting the fisheries on the coasts, bays, creeks, or harbours of the Island of Prince Edward. Whereof the Governor, Lieutenant-Governor, or Commander-in-chief of Her Majesty's said Island of Prince Edward for the time being, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

(Signed.) C. C. GRENVILLE.

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DOMINION OF CANADA.

STATUTES.

ACT OF MAY 22, 1868.

(31 Vict., cap. 61.)

AN ACT Respecting fishing by foreign vessels.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. The Governor may, from time to time, grant to any foreign ship, vessel or boat, or to any ship, vessel or boat not navigated according to the laws of the United Kingdom, or of Canada, at such rate, and for such period not exceeding one year, as he may deem expedient, a license to fish for or take, dry or cure any fish of any kind whatever, in British waters, within three marine miles of any of the coasts, bays, creeks or harbours whatever, of Canada, not included within the limits specified and described in the first article of the convention between His late Majesty King George the Third and the United States of America, made and signed at London on the twentieth day of October, 1818.

2. Any commissioned officer of Her Majesty's Navy serving on board of any vessel of Her Majesty's Navy cruising and being in the waters of Canada for purpose of affording protection to Her Majesty's Subjects engaged in the fisheries, or any commissioned officer of Her Majesty's Navy, fishery officer, or Stipendiary Magistrate on board of any vessel belonging to or in the service of the Government of Canada employed in the service of protecting the fisheries, or any officer of the Customs of Canada, Sheriff, Magistrate or other person duly commissioned for that purpose, may go on board of any ship, vessel or boat within any harbour in Canada or hovering (in British waters) within three marine miles of any of the coasts, bays, creeks or harbours in Canada, and stay on board so long as she may remain within such place or distance.

3. If such ship, vessel or boat be bound elsewhere, and shall continue within such harbour or so hovering for twenty-four hours after the Master shall have been required to depart, any one of such officers or persons as are above mentioned may bring such ship, vessel or boat into port and search her cargo, and may also examine the Master upon oath touching the cargo and voyage; and if the Master or person in command shall not truly answer the questions put to him in such examination, he shall forfeit four hundred dollars; and if such ship, vessel or boat be foreign, or not navigated according to the laws of the United Kingdom or of Canada and have been found fishing, or preparing to fish, or to have been fishing (in British waters) within three marine miles of any of the coasts, bays, creeks or har-

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bours of Canada, not included within the above mentioned limits, without a license, or after the expiration of the period named in the last license granted to such ship, vessel or boat and the tackle, rigging, apparel, furniture, stores and cargo thereof shall be forfeited.

4. All goods, ships, vessels and boats and the tackle, rigging, apparel, furniture, stores and cargo liable to forfeiture under this Act, may be seized and secured by any officers or persons mentioned in the second section of this Act; and every person opposing any officer or person in the execution of his duty under this Act, or aiding or abetting any other person in any opposition, shall forfeit eight hundred dollars, and shall be guilty of a misdemeanor, and upon conviction be liable to imprisonment for a term not exceeding two years.

5. Goods, ships, vessels and boats and the tackle, rigging, apparel, furniture, stores and cargo seized as liable to forfeiture under this Act, shall be forthwith delivered into the custody of the Collector or other principal officer of the Customs at the port nearest to the place where seized, to be secured and kept as other goods, ships, vessels and boats and the tackle, rigging, apparel, furniture, stores and cargo seized are directed by the laws in force in the Province in which such port is situate to be secured and kept, or into such other custody and keeping as the Governor in Council, or a court of Vice-Admiralty shall order.

6. All goods, vessels and boats and the tackle, rigging, apparel, furniture, stores and cargo, condemned as forfeited under this Act shall, by direction of the Collector or other principal officer of the Customs at the port where the seizure has been secured, be sold at public auction; and the proceeds of such sale shall be applied as follows: The amount chargeable for the custody of the property seized shall first be deducted and paid over for that service; one-half of the remainder shall be paid without deduction to the officer or person seizing the same; and the other half, after first deducting therefrom all costs incurred, shall be paid to the Receiver General of Canada through the Department of Marine and Fisheries; but the Governor in Council may, nevertheless, direct that any ship, vessel, boat or goods and the tackle, rigging, apparel, furniture, stores and cargo seized and forfeited shall be destroyed, or be reserved for the public service.

7. Any penalty or forfeiture under this Act may be prosecuted and recovered in any court of Vice-Admiralty within Canada.

8. The Judge of the court of Vice-Admiralty may, with the consent of the person seizing any goods, ship, vessel or boat and the tackle, rigging, apparel, furniture, stores and cargo, as forfeited under this Act, order the re-delivery thereof, on security by bond to be given by the party, with two sureties, to the use of Her Majesty: and in case any goods, ship, vessel or boat or the tackle, rigging, apparel, furniture, stores and cargo so redelivered is condemned as forfeited, the value thereof shall be paid into court and distributed as above directed.

9. Her Majesty's Attorney General for Canada may sue for and recover in Her Majesty's name any penalty or forfeiture incurred under this Act.

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10. In case a dispute arises as to whether any seizure has or has not been legally made or as to whether the person seizing was or was not authorized to seize under this Act, oral evidence may be heard thereupon, and the burden of proving the illegality of the seizure shall be upon the owner or claimant.

11. No claim to anything seized under this Act and returned into any Court of Vice Admiralty for adjudication shall be admitted unless the claim be entered under oath, with the name of the owner, his residence and occupation, and the description of the property claimed; which oath shall be made by the owner, his attorney or agent, and to the best of his knowledge or belief.

12. No person shall enter a claim to anything seized under this Act until security has been given in a penalty not exceeding two hundred and forty dollars to answer and pay costs occasioned by such claim; and in default of such security the things seized shall be adjudged forfeited, and shall be condemned.

13. No Writ shall be sued out against any officer or other person authorized to seize under this Act for any thing done under this Act, until one month after notice in writing delivered to him or left at his usual place of abode by the person intending to sue out such Writ, his attorney or agent; in which notice shall be contained the cause of action, the name and place of abode of the person who is to bring the action, and of his Attorney or Agent; and no evidence of any cause of action shall be produced except such as shall be contained in such notice.

14. Every such action shall be brought within three months after the cause thereof has arisen.

15. If on any information or suit brought to trial under this Act, on account of any seizure, judgment shall be given for the claimant, and the Judge or Court shall certify on the record that there was probable cause of seizure, the claimant shall not recover costs, nor shall the person who made the seizure be liable to any indictment or suit on account thereof; and if any suit or prosecution be brought against any person on account of any seizure under this Act and judgment be given against him, and the Court or Judge shall certify that there was probable cause for the seizure, then the Plaintiff, besides the thing seized or its value, shall not recover more than three and a half cents damages, nor any costs of suit, nor shall the Defendant be fined more than twenty cents.

16. Any officer or person who has made a seizure under this Act may, within one month after notice of action received, tender amends to the party complaining, or to his Attorney or Agent, and may plead such tender.

17. All actions for the recovery of penalties or forfeitures imposed by this Act must be commenced within three years after the offence committed.

18. No appeal shall be prosecuted from any decree, or sentence of any Court touching any penalty or forfeiture imposed by this Act, unless the inhibition be applied for and decreed within twelve months from the decree or sentence being pronounced.

19. In cases of seizure under this Act, the Governor in Council may, by order, direct a stay of proceedings; and in cases of condemnation may relieve from the penalty in whole or in part, and on such terms as may be deemed right.

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20. The several provisions of this Act shall apply to any foreign ship, vessel or boat in or upon the Inland Waters of Canada; and the provisions hereinbefore contained in respect to any proceedings in a court of Vice-Admiralty shall, in the case of any foreign ship, vessel or boat, in or upon the Inland Waters of Canada, apply to, and any penalty or forfeiture in respect thereof shall be prosecuted and recovered in, one of the Superior Courts of the Province within which such cause of prosecution may arise.

21. Neither the ninety-fourth chapter of the Revised Statutes of Nova Scotia, (third series,) "*Of the Coast and Deep Sea Fisheries,*" nor the Act of the Legislature of the Province of Nova Scotia, passed in the twenty-ninth year of Her Majesty's Reign, chapter thirty-five, amending the same, nor the Act of the Legislature of the Province of New Brunswick passed in the sixteenth year of Her Majesty's reign, chapter sixty-nine, intituled: "*An Act relating to the Coast Fisheries, and for the prevention of Illicit Trade,*" shall apply to any case to which this Act applies; and so much of the said chapter and of each of the said Acts as makes provision for cases provided for by this Act, is hereby declared to be inapplicable to such cases.

ACT OF MAY 12, 1870.

(33 Vict., cap. 15.)

AN ACT To amend the Act respecting Fishing by Foreign Vessels.

Whereas it is expedient for the more effectual protection of the in-shore fisheries of Canada against intrusion by foreigners, to amend the Act intituled "An Act respecting Fishing by Foreign Vessels," passed in the Thirty-first year of Her Majesty's Reign; Therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. The Third Section of the above cited Act, shall be, and is hereby repealed, and the following section is enacted in its stead:—

3. Any one of such officers or persons as are above-mentioned, may bring any ship, vessel, or boat, being within any harbor in Canada, or hovering (in British waters) within three marine miles of any of the coasts, bays, creeks, or harbors in Canada, into port and search her cargo, and may also examine the Master upon oath touching the cargo and voyage; and if the Master, or person in command, shall not truly answer the questions put to him in such examination, he shall forfeit four hundred dollars; and if such ship, vessel or boat be foreign, or not navigated according to the laws of the United Kingdom, or of Canada, and have been found fishing, or preparing to fish, or to have been fishing (in British waters) within three marine miles of any of the coasts, bays, creeks or harbors of Canada, not included within the above-mentioned limits, without a license or after the expiration of the period named in the last license granted to such ship, vessel, or boat, under the first section of this Act, such ship, vessel, or boat, and the tackle, rigging, furniture, stores, and cargo thereof shall be forfeited.

2. This Act shall be construed as one with the said Act "respecting Fishing by Foreign Vessels."

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ACT OF APRIL 14, 1871.

(34 Vict., cap. 23.)

AN ACT Further to amend the Act respecting Fishing by Foreign Vessels.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. The fifth section of the Act respecting fishing by foreign vessels, passed in the thirty-first year of Her Majesty's reign, chapter sixty-one, is hereby repealed, and the following section is hereby enacted in its stead.

5. Goods, ships, vessels and boats, and the tackle, rigging, apparel, furniture, stores and cargo seized as liable to forfeiture under this Act, shall be forthwith delivered into the custody of such fishery officer, or customs officer, or other person, as the Minister of Marine and Fisheries may from time to time direct, or retained by the officer making the seizure in his own custody if so directed by the Minister, in either case to be secured and kept as other goods, ships, vessels and boats, and the tackle, rigging, apparel, furniture, stores and cargo seized are directed by the laws in force in the Province in which the seizure is made, to be secured and kept.

2. The sixth section of the said Act is hereby repealed, and the following section is hereby enacted in its stead.

6. All goods, vessels and boats, and the tackle, rigging, apparel, furniture, stores and cargo condemned as forfeited under this Act shall be sold by public auction, by direction of the officer having the custody thereof, under the provisions of the next preceding section of this Act, and under regulations to be from time to time made by the Governor in Council, and the proceeds of every such sale shall be subject to the control of the Minister of Marine and Fisheries, who shall first pay therefrom all necessary costs and expenses of custody and sale, and the Governor in Council may from time to time apportion three-fourths, or less, of the net remainder, among the officers and crew of any Queen's ship, or Canadian Government vessel, from on board of which the seizure was made, as he may think right, reserving for the Government, and paying over to the Receiver General, at least one-fourth of such net remainder, to form part of the Consolidated Revenue Fund of Canada; but the Governor in Council may, nevertheless, direct that any goods, vessel, or boat, and the tackle, rigging, apparel, furniture, stores and cargo, seized and forfeited shall be destroyed, or be reserved for the public service.

3. This Act shall be construed as one with the Act hereby amended; and the sixth section of the said Act, as contained in the second section of this Act, shall apply to all goods, vessels, and boats, and the tackle, rigging, apparel, furniture, stores and cargo, condemned under the said Act before the passing of this Act, and to the proceeds of the sale thereof, remaining to be applied and paid at the time of the passing of this Act.

ACT OF NOVEMBER 26, 1886.

(49 Vict., cap. 114.)

AN ACT Further to amend the Act respecting Fishing by Foreign Vessels.

Reserved by the Governor General on Wednesday, 2nd June, 1886, for the signification of the Queen's pleasure thereon. Royal assent given by Her Majesty in Council, on the 26th day of November, 1886. Proclamation thereof made on the 24th day of December, 1886.)

Whereas it is expedient for the more effectual protection of the inshore fisheries of Canada, against intrusion by foreigners, to further amend the Act intituled "An Act respecting Fishing by Foreign Vessels," passed in the thirty-first year of Her Majesty's reign, and

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chaptered sixty-one; Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada enacts as follows:—

1. The section substituted by the first section of the Act thirty-third Victoria, chapter fifteen, intituled "An Act to amend the Act respecting Fishing by Foreign Vessels," for the third section of the hereinbefore recited Act, is hereby repealed, and the following section substituted in lieu thereof:

3. Any one of the officers or persons hereinbefore mentioned may bring any ship, vessel or boat, being within any harbor in Canada, or hovering in British waters within three marine miles of any of the coasts, bays, creeks or harbors in Canada, into port and search her cargo, and may also examine the master upon oath touching the cargo and voyage; and if the master or person in command does not truly answer the questions put to him in such examination, he shall incur a penalty of four hundred dollars; and if such ship, vessel or boat is foreign, or not navigated according to the laws of the United Kingdom or of Canada, and (a) has been found fishing or preparing to fish, or to have been fishing in British waters within three marine miles of any of the coasts, bays, creeks or harbors of Canada, not included within the above mentioned limits, without a license, or after the expiration of the term named in the last license granted to such ship, vessel or boat, under the first section of this Act, or (b) has entered such waters for any purpose not permitted by treaty or convention, or by any law of the United Kingdom or of Canada for the time being in force, such ship, vessel or boat and the tackle, rigging, apparel, furniture, stores and cargo thereof shall be forfeited.

2. The Acts mentioned in the schedule hereto are hereby repealed.

3. This Act shall be construed as one with the said "Act respecting Fishing by Foreign Vessels" and the amendments thereto.

ACT OF MAY 16, 1890.

(53 Vict., cap. 19.)

ACT Of the Government of Canada, respecting Fishing-Vessels of the United States of America.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. The Governor in Council may authorize the issue of licenses to United States' fishing vessels, enabling them to enter any port on the Atlantic coast of the Dominion of Canada, during the calendar year 1890, for the following purposes:

(*a*) The purchase of bait, ice, seines, lines, and all other supplies and outfits;

(*b*) The transhipment of catch, and the shipping of crews.

(*2*) The fee for such licenses shall be 1 dol. 50 c. per ton, and the terms and conditions thereof shall be determined by the Governor in Council.

2. All licenses issued by the Government of Newfoundland, granting to United States' fishing vessels the privilege of entering the ports of Newfoundland for the purposes hereinabove mentioned, shall be valid in Canadian ports whenever licenses issued by the Dominion of Canada to such vessels shall be valid for the said purposes in the ports of Newfoundland.

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ACT OF JULY 10, 1891.

(54 and 55 Vict., cap. 4.)

ACT Respecting Fishing Vessels of the United States of America.

Whereas "The Act respecting Fishing Vessels of the United States of America" assented to on the 16th day of May, 1890, expired on the 31st day of December, 1890:

And whereas it is expedient to continue, for the present season, the privileges accorded United States' fishing-vessels under the provisions of that Act;

Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. (1) The Governor in Council may authorize the issue of licences to United States' fishing vessels, enabling them to enter any port on the Atlantic coast of the Dominion of Canada, during the calendar year 1891, for the following purposes:—

(*a*) The purchase of bait, ice, seines, lines, and all other supplies and outfits;

(*b*) The transhipment of catch, and the shipping of crews.

(2) The fee for such licenses shall be 1 dol. 50 c. per ton register, and the terms and conditions thereof shall be determined by the Governor in Council.

2. All licenses issued by the Government of Newfoundland, granting to United States' fishing-vessels the privilege of entering the ports of Newfoundland for the purposes hereinbefore mentioned, shall be valid in Canadian ports whenever licenses issued by the Dominion of Canada to such vessels are valid for the said purposes in the ports of Newfoundland.

REVISED STATUTES, 1906, CHAPTER 45.

AN ACT Respecting Fisheries and Fishing.

SHORT TITLE.

1. This Act may be cited as the Fisheries Act. R. S., c. 95, s. 1.

INTERPRETATION.

2. In this Act, unless the context otherwise requires, the expression 'Minister' means the Minister of Marine and Fisheries.

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FISHERY LEASES AND LICENSES.

8. The Minister may, wherever the exclusive right of fishing does not already exist by law, issue or authorize to be issued fishery leases and licenses for fisheries and fishing wheresoever situated or carried on; but leases or licenses for any term exceeding nine years shall be issued only under authority of the Governor in Council. R. S., c. 95, s. 4.

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COD-FISHING.

10. No one shall use mackerel, herring or caplin seines for taking codfish, and no codfish seine shall be of a less sized mesh than four inches in extension in the arms, and three inches in the bunt or bottom of the seine. R. S., c. 95, s. 5.

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POSSESSION OF FISH.

44. No one shall, without lawful excuse, the proof whereof shall lie on him, buy, sell or possess any fish, or portion of any fish named in this Act, caught or killed at a time or in a manner prohibited by law. R. S., c. 95, s. 12.

45. Every customs officer, excise officer, police officer or constable, clerk of a market or other person in charge of any market-place in any village, town or city, shall seize and, upon view, confiscate to his own proper use, any fish mentioned in this Act, caught or killed during prohibited seasons, or which appears to have been killed by unlawful means.

(2) Every such seizure and appropriation, with the date, place and circumstances thereof, shall together with the name, residence and calling of the person in whose possession such fish was found, be duly reported to the fishery officer who has jurisdiction over the district within which such seizure, confiscation and appropriation took place. R. S., c. 95, s. 12.

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GENERAL PROHIBITIONS.

47. No one shall fish for, take, catch or kill fish in any water, or along any beach, or within any fishery limits, described in any lease or license, or place, use, draw or set therein any fishing gear or apparatus, except by permission of the occupant under such lease or license for the time being, or shall disturb or injure any fishery: Provided that the occupation of any fishing station or waters so leased or licensed for the express purpose of net fishing shall not interfere with the taking of bait used for cod-fishing, or prevent angling for other purposes than those of trade and commerce.

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(7) No one shall use a bag-net, trap-net or fish-pound, except under a special license, granted for capturing deep-sea fish other than salmon.

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48. No one shall use purse seines for the capture of fish in any of the waters of Canada: Provided that the Minister may issue special fishery licenses for the use of purse seines in certain waters in the province of British Columbia specified in the said licenses. 3 E. VII., c. 23, s. 2.

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52. Whenever the size of the meshes of nets or apparatus for the capture of fish is fixed by this Act, or by any fishery regulation under it, it shall be unlawful to so arrange or adapt the nets or fishing apparatus as to practically diminish the size of such meshes. 61. V., c. 39, s. 2.

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INJURIES TO FISHING GROUNDS AND POLLUTION OF RIVERS.

53. No one shall throw overboard ballast, coal ashes, stones, or other prejudicial or deleterious substances in any river, harbour or roadstead or any water where fishing is carried on, or throw overboard or let fall upon any fishing bank or ground, or leave or deposit or cause to be thrown, left or deposited, upon the shore, beach or bank of any water, or upon the beach between high and low water mark, inside of any tidal estuary, or within two hundred yards of the mouth of any salmon river, remains or offal of fish, or of marine animals, or leave decayed or decaying fish in any net or other fishing apparatus: Provided that such remains or offal may be buried ashore, beyond high water mark, and that at establishments situated inside of the mouths of rivers for carrying on deep-sea fisheries, the same may be dropped into perforated boxes or inclosures built upon the beach, or under stage-heads, in such manner as to prevent the same from being floated or drifted into the streams, or may be disposed of in such other manner as any fishery officer prescribes.

(2) No person shall cause or knowingly permit to pass into, or put or knowingly permit to be put, lime, chemical substances or drugs, poisonous matter, dead or decaying fish, or remnants thereof, mill rubbish or sawdust or any other deleterious substance, in any water frequented by any of the kinds of fish mentioned in this Act. R. S., c. 95, s. 15; 58–59 V., c. 27, s. 1.

REGULATIONS.

54. The Governor in Council may, from time to time, make regulations,—

(*a*) for the better management and regulation of the sea coast and inland fisheries;

(*b*) to prevent or remedy the obstruction and pollution of streams;

(*c*) to regulate and prevent fishing;

(*d*) to prohibit the destruction of fish; and,

(*e*) to forbid fishing except under authority of leases or licenses.

(2) Such regulations shall take effect from the date of the publication thereof in the Canada Gazette, and shall have the same force and effect as if herein enacted, notwithstanding that such regulations extend, vary or alter any of the provisions of this Act respecting the places or modes of fishing or the times specified as prohibited or close seasons, and may fix such other modes, times and places as are deemed by the Governor in Council adapted to different localities, or otherwise expedient.

(3) Every offence against any regulation made under this Act may be stated as in violation of this Act. R. S., c. 95, s. 16.

POWERS OF FISHERY OFFICERS AND OTHER JUSTICES.

55. Any fishery officer or other justice of the peace may, on view, convict of any of the offences punishable under the provisions of this Act, and may remove instantly and détain any materials unlawfully in use. R. S., c. 95, s. 17.

56. Any fishery officer or other justice of the peace may search, or grant a warrant to search, any vessel or place where there is reason

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to believe that any fish taken in violation of this Act, or anything used in violation thereof, is concealed. R. S., c. 95, s. 17.

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60. Gurry grounds may be designated or defined by any fishery officer. R. S., c. 95, s. 17.

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62. Property seized by any fishery officer, stipendiary magistrate or naval officer, acting as aforesaid, may be removed for disposal to the nearest or most convenient port where any revenue officer or other public officer empowered to deal with the matter resides. R. S., c. 95, s. 17.

63. Whenever it is impracticable for any fishery officer, stipendiary magistrate or naval officer, acting in such capacity, to cause any prisoner to be conveyed to, and committed to the nearest common gaol, he may detain him on board of the vessel, or transfer him to another vessel for conveyance to and delivery at the most convenient place, and with all convenient despatch, where he can be duly committed into the custody of the sheriff or other officer of the county or district in which the common gaol is situated to which he is ordered to be committed; and until such prisoner is so delivered into the immediate custody of any sheriff or gaoler the fishery officer, stipendiary magistrate or naval officer having him in charge, shall have, in all places through which it is necessary to convey such prisoner, the same authority and power in regard to such prisoner, and to command the aid of any of His Majesty's subjects in preventing his escape, or in retaking him in case of escape, as any county or district sheriff or peace officer has while lawfully conveying a prisoner from one part of his own district to another. R. S., c. 95, s. 17.

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69. Every subject of His Majesty may use vacant public property, such as by law is common and accessory to public rights of fishery and navigation, for the purposes of landing, salting, curing and drying fish, and may cut wood thereon for such purposes, and no other person shall occupy the same station unless it has been abandoned by the first occupant for twelve consecutive months; and at the expiration of that period any new occupier shall pay the value of flakes and stages and other property thereon, of which he takes possession, or the buildings and improvements may be removed by the original owner.

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(3). No property leased or licensed shall be deemed vacant. R. S., c. 95, s. 22.

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OFFENCES AND PENALTIES.

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84. Except taking bait for cod-fishing or angling for purposes other than those of trade and commerce, every one who fishes for, takes, catches or kills fish in any water, or along any beach, or within any fishery limits, described in any lease or license, or places, uses, draws or sets therein any fishing gear or apparatus, except by permission of the occupant under such lease or license for the time being, or disturbs or injures any fishery, shall be liable to a penalty not

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exceeding one hundred dollars and costs, or to imprisonment for a term not exceeding two months; and the fishing apparatus so used, and all fish taken or caught, shall be forfeited, and any fishery officer or the holder of any such lease or license may, on view, forthwith seize and remove any net or apparatus so used, to be dealt with according to law. R. S., c. 95, s. 14.

85. Every one using purse seines for the capture of fish in any of the waters of Canada, except, as to certain waters in the province of British Columbia, under a special fishery license of the Minister, shall be liable for each offence, to a penalty of not less than fifty dollars, and not exceeding five hundred dollars together with the confiscation of the vessel, boat and apparatus used in connection with such capture. 3 E. VII., c. 23, s. 2.

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87. Every one who, contrary to the provisions of this Act, throws overboard ballast, coal ashes, stones, or other prejudicial or deleterious substances in any river, harbour or roadstead or any water where fishing is carried on, or throws overboard or lets fall upon any fishing bank or ground, or leaves or deposits or causes to be thrown, left or deposited, upon the shore, beach or bank of any water, or upon the beach between high and low water mark, inside of any tidal estuary, or within two hundred yards of the mouth of any salmon river, remains or offal of fish, or of marine animals, or leaves decayed or decaying fish in any net or other fishing apparatus, shall be liable for each offence, to a penalty not exceeding one hundred dollars, or to imprisonment for a term not exceeding two months; and every one so offending, whether master or servant, and the master or owner of any vessel or boat from which such ballast or offal, or other prejudicial substance is thrown, shall be liable to penalty and imprisonment as aforesaid for each such offense. R. S., c. 95, s. 15.

88. Every person who causes or knowingly permits to pass into, or puts or knowingly permits to be put, lime, chemical substances or drugs, poisonous matter, dead or decaying fish, or remnants thereof, mill rubbish or sawdust or any other deleterious substance, in any water frequented by any of the kinds of fish mentioned in this Act, shall be liable, for a first-offence, to a penalty of twenty dollars and costs; for the second offence, to a penalty not exceeding forty dollars and costs, and also in addition thereto a further penalty not exceeding ten dollars for every day during which such offence is continued; and for the third or any subsequent offence, to a penalty not exceeding one hundred dollars and costs, and also in addition thereto a further penalty not exceeding twenty dollars for every day during which such offence is continued. 58–59 V., c. 27, s. 1.

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92. All vessels, boats, canoes, rafts, vehicles of any description, nets, fishing gear, materials, implements or appliances used in violation of this Act or any regulation under it, and any fish or other marine animal taken, caught, killed, conveyed, bought, sold or had in possession in violation of this Act or any regulation under it, and all other fish, shell-fish or marine animals otherwise legally taken, caught, killed, conveyed, bought, sold, or had in possession, and of whatever size and description, which are intermixed therewith, shall be confiscated to His Majesty, and may be seized and confiscated, on

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view, by any fishery officer, or taken and removed by any person for delivery to any fishery officer or justice of the peace. 61 V., c. 39, s. 4.

93. Should any nets, seines, or other fishing apparatus be set or used in violation of this Act or any regulation thereunder for more than one day, then each day during which such seines, nets or other fishing apparatus shall remain so set or used shall constitute a separate offence, and may be punished accordingly; and should any other violation of this Act, or of any regulation thereunder, continue for more than one day, then each day during which such violation continues shall constitute a separate offence, and may be punished as such. 57–58 V., c. 51, s. 9.

94. Except as herein otherwise provided, every one who violates any provision of this Act or of the regulations under it, shall be liable to a penalty not exceeding one hundred dollars and costs, and in default of payment, to imprisonment for a term not exceeding three months; and any fishery officer or justice of the peace may grant a warrant of distress for the amount of such penalty and costs. 61 V., c. 39, s. 3.

REVISED STATUTES, 1906, CHAPTER 47.

AN ACT to protect the Customs and Fisheries.

SHORT TITLE.

1. This Act may be cited as the Customs and Fisheries Protection Act.

LICENSES.

2. The Governor in Council may, from time to time, grant to any foreign ship, vessel or boat, or to any ship, vessel or boat not navigated according to the laws of the United Kingdom or of Canada, at such rate and for such term not exceeding one year, as he deems expedient, a license to fish for, take, dry or cure any fish of any kind whatsoever, in British waters, within three marine miles of any of the coasts, bays, creeks or harbours of Canada, not included within the limits specified and described in the first article of the convention between His late Majesty King George the Third and the United States of America, made and signed at London, on the 20th day of October, one thousand eight hundred and eighteen. R. S., c. 94, s. 1.

3. The Governor in Council may, from time to time, authorize the issue of licenses to United States fishing vessels, enabling them to enter any port on the Atlantic coast of Canada, during the periods mentioned in such licenses, for the purposes of—

(*a*) the purchase of bait, ice, seines, lines and all other supplies and outfits; and,

(*b*) the transhipment of catch, and the shipping of crews.

(2) The fee for such licenses shall be one dollar and fifty cents per ton register, and the terms and conditions thereof shall be determined by the Governor in Council.

(3) No license shall be issued for a longer period than one calendar year, and all licenses shall expire on the thirty-first day of December of the year for which they are issued. 55–56 V., c. 3, s. 1.

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4. The order in council for the issue of such licenses shall; without delay, be communicated to both Houses of Parliament, if Parliament is then in session, or, if not then in session, within the first ten days of the next ensuing session. 55-56 V., c. 3, s. 2.

BOARDING AND SEARCH.

5. Any commissioned officer of His Majesty's navy, serving on board of any vessel of His Majesty's navy cruising and being in the waters of Canada for the purpose of affording protection to His Majesty's subjects engaged in the fisheries, or any commissioned officer of His Majesty's navy, fishery officer or stipendiary magistrate, on board of any vessel belonging to or in the service of the Government of Canada and employed in the service of protecting the fisheries, or any officer of the Customs of Canada, sheriff, justice of the peace or other person duly commissioned for that purpose, may go on board of any ship, vessel or boat within any harbour in Canada, or hovering in British waters within three marine miles of any of the coasts, bays, creeks, or harbours in Canada, or in or upon the inland waters of Canada, and stay on board so long as she remains within such harbour or distance. R. S., c. 94, s. 2.

6. Any one of the officers or persons hereinbefore mentioned may bring any ship, vessel or boat, being within any harbour in Canada, or hovering in British waters, within three marine miles of any of the coasts, bays, creeks or harbours in Canada, or in or upon the inland waters of Canada, into port, and search her cargo, and may also examine the master or person in command upon oath touching the cargo and voyage. R. S., c. 94, ss. 3 and 20.

7. Every ship, vessel, or boat, liable to seizure or examination under this or any Act of the Parliament of Canada shall bring to, when required so to do in the King's name by any commissioned officer of His Majesty's navy, or any officer of the Customs or of the fisheries protection service, or person employed as such or any stipendiary magistrate, on board of any cruiser or vessel belonging to or in the service of the Government of Canada and employed in the service of protecting the Customs or Fisheries, or, upon signal made by any such Government vessel or cruiser by hoisting the pennant and ensign approved and appointed for the purpose by order of the Governor in Council.

(2) On any such ship, vessel or boat failing to bring to when required being chased by any such Government vessel or cruiser having such pennant and ensign hoisted, the captain, master or other person in charge of such Government vessel or cruiser may, after first causing a gun to be fired as a signal, fire at or into such ship, vessel or boat.

(3) Such captain, master or other person, as well as any person acting in his aid or by his direction, is hereby indemnified and discharged from any indictment, penalty, action, or other proceeding for so doing. 61 V., c. 38, ss. 1 and 2.

8. No person on board of any ship, vessel or boat, so liable to seizure or examination, which is being chased by any Government vessel or other cruiser for having failed to bring to upon being required so to do or upon signal made as in the last preceding section provided,

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shall, during such chase, and before such ship, vessel or boat brings to, throw overboard, stave or destroy any part of the cargo of such ship, vessel or boat to prevent seizure. 61 V., c. 38, s. 3.

OFFENCES AND PENALTIES.

9. If the master or person in command of any ship, vessel or boat does not, upon any examination on oath by any officer or person under the authority of this Act touching the cargo and voyage of any such ship, vessel or boat, truly answer all questions put to him in such examination, he shall incur a penalty of four hundred dollars. R. S., c. 94, s. 3.

10. Every ship, vessel or boat which is foreign, or not navigated according to the laws of the United Kingdom or of Canada, which,—

(a) has been found fishing or preparing to fish, or to have been fishing in British waters within three marine miles of any of the coasts, bays, creeks or harbours of Canada, not included within the limits specified and described in the first article of the aforesaid convention, or in or upon the inland waters of Canada, without a license then in force granted under this Act; or,

(b) has entered such waters for any purpose not permitted by treaty or convention, or by any law of the United Kingdom or of Canada for the time being in force;

shall, together with the tackle, rigging, apparel, furniture, stores and cargo thereof, be forfeited. R. S., c. 94, ss. 3 & 20.

11. If any ship, vessel, or boat, liable to seizure or examination under this or any Act of the Parliament of Canada does not bring to, when required so to do in the King's name by any commissioned officer of His Majesty's navy, or any officer of the Customs or of the fisheries protection service, or person employed as such, or any stipendiary magistrate on board of any cruiser or vessel belonging to or in the service of the Government of Canada and employed in the service of protecting the Customs or Fisheries, or upon signal made by any such Government vessel or cruiser by hoisting the pennant and ensign approved and appointed for such purpose by order of the Governor in Council, the master or officer in charge of such ship, vessel, or boat, shall incur a penalty of four hundred dollars.

(2) The ship, vessel, or boat, may be seized and detained until such penalty is paid. 61 V., c. 38, s. 1.

12. If, during chase by such Government vessel or cruiser, or before such ship, vessel or boat brings to any person on board of such ship, vessel or boat throws overboard or staves or destroys any part of her cargo to prevent seizure, such ship, vessel, or boat shall be forfeited. 61 V., c. 38, s. 3.

13. Every person opposing any officer or person in the execution of his duty under this Act, or aiding or abetting any other person in such opposition, is guilty of an indictable offence, and liable to a fine of eight hundred dollars and two years' imprisonment. R. S., c. 94, s. 4.

PROCEDURE.

14. All suits and proceedings for the forfeiture or sale of any ship, vessel or boat, or for the recovery and enforcement of any penalty imposed by reason of,—

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(*a*) such ship, vessel, or boat not bringing to when required so to do in the King's name, as by this Act provided; or,

(*b*) the throwing overboard, staving or destroying by any person on board any such ship, vessel, or boat during chase by any Government cruiser or vessel, or before such ship, vessel, or boat brings to, after being required so to do in the King's name, of any part of her cargo to prevent seizure;

may, in addition to any other remedy provided by law, be commenced and prosecuted under the procedure provided by the Customs Act, in so far as the same is applicable.

(2) The proceeds of such penalties and forfeitures shall be dealt with in the same manner as the proceeds of penalties and forfeitures under the laws relating to the Customs. 61 V., c. 38, s. 4.

15. All goods, ships, vessels and boats, and the tackle, rigging, apparel, furniture, stores and cargo liable to seizure or forfeiture under this Act, may be seized and secured by any of the officers or persons hereinbefore authorized to go on board of, search or pursue a ship, vessel or boat. R. S., c. 94, s. 4.

16. All goods, ships, vessels and boats, and the tackle, rigging, apparel, furniture, stores and cargo seized as liable to forfeiture under this Act, shall be forthwith delivered into the custody of such fishery officer, or Customs officer, or other person, as the Minister of Marine and Fisheries, from time to time, directs, or shall be retained by the officer making the seizure in his own custody, if so directed by the Minister; and, in either case, shall be secured and kept as other goods, ships vessels and boats, and the tackle, rigging, apparel, furniture, stores and cargo seized are directed by the laws in force in the province in which the seizure is made, to be secured and kept. R. S., c. 94, s. 5.

17. All goods, vessels and boats, and the tackle, rigging, apparel, furniture, stores and cargo condemned as forfeited under this Act, shall, under regulations made from time to time by the Governor in Council, be sold by public auction, by direction of the officer who has the custody thereof: Provided that the Governor in Council may direct that any goods, vessels or boats and the tackle, rigging, apparel, furniture, stores and cargo seized and forfeited shall be destroyed or be reserved for the public service.

(2) The proceeds of every such sale shall be subject to the control of the Minister of Marine and Fisheries, who shall first pay thereout all necessary costs and expenses of custody and sale; and the Governor in Council may from time to time apportion three-fourths or less of the net remainder among the officers and crew of any of His Majesty's ships or Canadian Government vessels from on board of which the seizure was made as he thinks right, but he shall reserve to the Crown and pay over to the Minister of Finance at least one-fourth of such net remainder to form part of the Consolidated Revenue Fund of Canada. R. S., c. 94, s. 6.

18. Every penalty or forfeiture under this Act may be recovered or enforced in the Exchequer Court of Canada on its Admiralty side, or in any superior court in the province within which the cause of prosecution arose. R. S., c. 94, ss. 7 & 20.

19. The Judge of the Exchequer Court on its Admiralty side or any local judge in Admiralty, or any judge of any superior court in which the cause is pending, may, with the consent of the person who seizes any goods, ship, vessel or boat, and the tackle, rigging,

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apparel, furniture, stores and cargo forfeited under this Act, order the redelivery thereof, on security by bond to be given by the party, with two sureties, to His Majesty; and if any goods, ship, vessel or boat, or the tackle, rigging, apparel, furniture, stores and cargo so re-delivered are condemned as forfeited, the value thereof shall be paid into court and distributed as hereinbefore directed. R. S., c. 94, s. 8.

20. The Attorney General of Canada may, in His Majesty's name, sue for or enforce any penalty or forfeiture incurred under this Act. R. S., c. 94, s. 9.

21. The burden of proving the illegality of any seizure, made for alleged violation of any of the provisions of this Act, or that the officer or person seizing was not by this Act authorized to seize, shall lie upon the owner or claimant. R. S., c. 94, s. 10.

22. No claim to anything seized under this Act and returned into the Exchequer Court on its Admiralty side for adjudication shall be entered in such Court, unless the claim is entered under oath, made by the owner, his attorney or agent, setting forth to the best of his knowledge and belief the name of the owner, his residence and occupation, and the description of the property claimed. R. S., c. 94, s. 11.

23. No person shall enter a claim to anything seized under this Act until security is given, in a penal sum not exceeding two hundred and forty dollars, to answer and pay the costs occasioned by such claim.

(2) In default of such security, the things seized shall be declared forfeited, and shall be condemned. R. S., c. 94, s. 12.

24. No writ shall be sued out against any officer or other person authorized to seize under this Act for anything done under this Act, until one month after notice in writing containing a statement of the cause of action, the name and place of abode of the person who is to bring the action, and of his attorney or agent, has been delivered to such officer or person or left at his usual place of abode by the person intending to sue out such writ, his attorney or agent.

(2) No evidence of any cause of action except such as is contained in such notice shall be admitted. R. S., c. 94, s. 13.

25. Every officer or person who has made a seizure under this Act may, within one month after notice of action received, tender amends to the person complaining, or to his attorney or agent, and may plead such tender. R. S., c. 94, s. 16.

26. Every such action shall be brought within three months after the cause thereof has arisen. R. S., c. 94, s. 14.

27. If, on any information, or suit brought to trial under this Act on account of any seizure, judgment is given for the claimant, and the court or judge certifies that there was probable cause for seizure, the claimant shall not be entitled to costs, and the person who made the seizure shall not be liable to any indictment or suit on account thereof.

(2) If any suit is brought against any person on account of any seizure under this Act, and judgment is given against him, and the court or judge certifies that there was probable cause for the seizure, the plaintiff, besides the thing seized or its value, shall not recover more than four cents damages, and shall not recover any costs, nor, in case of prosecution, shall the defendant be fined more than twenty cents. R. S., c. 94, s. 15.

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28. All actions for the recovery or enforcement of penalties or forfeitures imposed by this Act shall be commenced within three years after the offence committed. R. S., c. 94, s. 17.

29. No appeal shall be prosecuted from any decree, or sentence of any court, in respect of any penalty or forfeiture imposed by this Act, unless the inhibition is applied for and decreed within twelve months from the decree or sentence being pronounced. R. S., c. 94, s. 18.

30. In cases of seizure under this Act, the Governor in Council may direct a stay of proceedings, and, in cases of condemnation, may relieve from the penalty, in whole or in part, and on such terms as are deemed right. R. S., c. 94, s. 19.

REVISED STATUTES, 1906, CHAPTER 48.

AN ACT Respecting the Customs.

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15. The collector or proper officer of any Canadian seaport may cause any vessel, bound for such seaport from any port out of Canada, to be boarded by an officer, detailed by him for such service, at any place within three marine miles of the anchorage ground, and such officer may demand from the master or purser of such vessel a correct copy of the report inwards intended by such master or purser to be presented at the Custom-house on arrival, and may remain on board the vessel until she anchors.

(2) The copy of the report so received by such officer shall be deposited by him at the Custom-house, as the vessel's report inwards, for comparison with that to be presented by the master or purser in person. R. S., c. 32, s. 24.

16. The master of every vessel coming from any port or place out of Canada, or coastwise, and entering any port in Canada, whether laden or in ballast, shall go without delay, when such vessel is anchored or moored, to the Custom-house for the port or place of entry where he arrives, and there make a report in writing to the collector or other proper officer, of the arrival and voyage of such vessel.

(2) The report shall state, so far as any of the following particulars are or can be known to the master, the name, country, tonnage and port of registry of the vessel, the name of the master, the country of the owners, the number and names of the passengers, if any, the number of the crew, and whether the vessel is laden or in ballast, and if laden, the marks and numbers of every package and parcel of goods on board, and where the same were laden, and the particulars of any goods stowed loose, and where and to whom consigned, and where any and what goods, if any, have been laden or unladen, or bulk has been broken during the voyage, also the part of the cargo and the number and names of the passengers intended to be landed at that port, and at any other port in Canada, what part of the cargo, if any, is intended to be exported in the same vessel, and what surplus stores remain on board. R. S. c. 32, s. 25.

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ENTRY OUTWARDS.

96. The master of every vessel bound outwards from any port in Canada to any port or place out of Canada, or on any voyage to any place within or without the limits of Canada, coastwise or by inland navigation, shall deliver to the collector or other proper officer a report outwards under his hand of the destination of such vessel, stating her name, country and tonnage, the port of registry, the name of the master, the country of the owners and the number of the crew.

(2) The master shall also, before the vessel departs, bring and deliver to the collector or other proper officer, a content in writing under his hand, of the goods laden, and the names of the respective shippers and consignees of the goods, with the marks and numbers of the packages or parcels of the same, and shall make and subscribe a declaration to the truth of such content as far as any such particulars can be known to him. 51 Vic., c. 14, s. 20.

97. Before any goods or ballast are taken on board such vessel, the master shall show that all goods therein imported except such as were reported for exportation in the same vessel, have been duly entered: Provided that it shall be lawful for the collector or other proper officer of Customs to issue a stiffening order that such goods or ballast as are specified therein may be laden before the former cargo is discharged. 51 V., c. 14, s. 20.

98. The master of every vessel whether in ballast, or laden, shall, before departure, come before the collector or other proper officer, and answer all such questions concerning the vessel, and the cargo, if any, and the crew and the voyage, as are demanded of him by such officer, and, if required, shall make his answers or any of them part of the declaration made under his hand.

(2) The collector or other proper officer, if such vessel is laden, shall thereupon make out and give to the master a certificate of the clearance of such vessel for her intended voyage with merchandise or a certificate of her clearance in ballast, as the case may be.

(3) If there is merchandise on board, and the vessel is bound to any port in Canada, such clearance shall state whether any and which of the goods are the produce of Canada, and, if the goods are such as are liable to duties, whether the duties thereon have been paid; and in such case, the master shall hand the clearance to the collector at the next port in Canada at which he arrives, immediately on his arrival. R. S., c. 32, s. 98.

99. Before a clearance is granted to any vessel bound to a port or place out of Canada, the owners or shippers or consignors of the cargo on board such vessel shall deliver to the collector or other proper officer of Customs entries of such parts of the cargo as are shipped by them respectively, and shall verify the same by oath.

(2) Such entries shall specify the kinds and quantities of the articles shipped by them respectively, and the value of the total quantity of each kind of article, and whether the said goods are of Canadian or of foreign production or manufacture.

(3) Such oath shall state that such entry contains a full, just and true account of all articles laden on board of such vessel by such owners, shippers or consignors respectively; and that the values of such articles are truly stated according to their actual cost, or the value which they truly bear at the port and time of exportation.

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(4) In case the goods so shipped or any part thereof are or is liable by law to any export duty, the amount of such duty shall be stated in such entry; and no such entry shall be valid, and no clearance shall be granted to such vessel until such duty is paid to the collector or other proper officer of Customs. R. S., c. 32, s. 101.

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116. For the purpose of the levying of any duty, or for any other purpose of this Act or any other law relating to the Customs,—

(*a*) the importation of any goods, if made by sea, coastwise or by inland navigation, in any decked vessel, shall be deemed to have been completed from the time the vessel in which such goods were imported came within the limits of the port at which they ought to be reported, and, if made by land or by inland navigation in any undecked vessel, then from the time such goods were brought within the limits of Canada;

(*b*) the exportation of any goods from Canada shall be deemed to have been commenced from the time of the legal shipment of such goods for exportation after due entry outwards in any decked vessel, or, if the exportation is by land or in any undecked vessel, from the time the goods were carried beyond the limits of Canada;

(*c*) the date of exportation in any decked vessel of any goods to Canada, from any port or place out of Canada, shall be deemed and taken to be the date at which such goods actually left such port or place out of Canada for their destination in Canada, which date may be established by the production of the clearance of the vessel from such port or place out of Canada, or the oath of the master as to the date of sailing, if such sailing was subsequent to the date of the clearance;

(*d*) the time of the arrival of any vessel in a Canadian port shall be deemed to be the time at which the report of such vessel was, is, or ought to have been made;

(*e*) the time of the departure of any vessel from a Canadian port shall be deemed to be the time of the last clearance of such vessel on the voyage on which she departed. 52 V., c. 14, s. 12.

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GOODS TO BE IMPORTED IN REGISTERED VESSELS.

118. No person, unless he is authorized by the Governor in Council, shall import any goods, wares or merchandize from any port or place out of Canada in any vessel which has not been duly registered and has not a certificate of such registry on board. R. S., c. 32, s. 170.

REVISED STATUTES, 1906, CHAPTER 113.

AN ACT Respecting Shipping in Canada.

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PILOTAGE DISTRICTS AND AUTHORITIES.

411. The pilotage district of Quebec shall comprise the river St. Lawrence from the basin of Portneuf inclusively to an imaginary line drawn from the eastern anchorage ground off Barnaby Island

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to the eastern anchorage ground under Cape Columbia on the north shore, together with those parts of all rivers, waters, creeks, bays and coves within the said limits where the tide ebbs and flows. R. S., c. 80, s. 4.

412. The river Saguenay shall be within the pilotage district of Quebec. 4–5 E. VII., c. 34, s. 1.

413. The Minister shall be the pilotage authority of the pilotage district of Quebec, and all the powers vested in the Harbour Commissioners of Quebec, previously to the twentieth day of July in the year one thousand nine hundred and five, as such pilotage authority, shall continue to be vested in the Minister: Provided that nothing in this Part shall authorize the Minister to sit as a tribunal for the trial of offences of which pilots may be accused before the pilotage authority; but the Minister may, in any case not provided for by Part X. of this Act, designate a tribunal or officer to try any such offence. 4–5 E. VII., c. 34, s. 2.

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416. The Governor in Council may, by order in council, fix the limits of any other pilotage district, in any places not included within either of the pilotage districts of Quebec or Montreal. R. S. c. 80, ss. 96 and 13.

417. The Halifax Pilot Commissioners shall be the pilotage authority of the pilotage district of Halifax.

(2) The Board of such Commissioners shall consist of,—

(*a*) three persons appointed by the Governor in Council;

(*b*) two persons elected by the city council for the city of Halifax; and,

(*c*) two persons elected by the executive committee of the Chamber of Commerce of the city of Halifax. R. S., c. 80, s. 6.

418. The St. John Pilot Commissioners shall be the pilotage authority of the pilotage district of St. John.

(2) The Board of such Commissioners shall consist of,—

(*a*) three persons appointed by the Governor in Council;

(*b*) two persons elected by the mayor, aldermen and commonalty of the city of St. John; and,

(*c*) two persons elected by the council of the St. John Board of Trade. R. S., c. 80, s. 9.

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429. The Governor in Council may constitute pilotage authorities for any pilotage district established in any places not included within either of the pilotage districts of Quebec, Montreal, Halifax or St. John and such pilotage authorities shall consist of not less than three or more than five persons a majority of whom respectively shall be a quorum for the transaction of business and the exercise of all the powers conferred by this Part. R. S., c. 80, s. 13.

430. The Governor in Council may, from time to time, make the payment of pilotage dues compulsory or not compulsory, within the limits of any pilotage district fixed by the Governor in Council under this Part. R. S., c. 80, s. 13.

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GENERAL POWERS OF PILOTAGE AUTHORITIES.

433. Subject to the provisions of this Part, or of any Act for the time being in force in its pilotage district, every pilotage authority shall, within its district, have power, from time to time, by by-law confirmed by the Governor in Council, to,—

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(*k*) provide for the adjustment and decision of questions and disputes arising between masters of ships, pilots and others, respecting pilotage;

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467. If any master of a ship which is not an exempted ship removes such ship or causes such ship to be removed from one place to another within the harbour of Quebec, without the assistance of a licensed pilot for the pilotage district of Quebec, he shall pay to the Quebec Pilots Corporation the same pilotage dues as he would have been liable to pay if he had obtained the assistance of one of such licensed pilots.

(2) This provision shall not apply to the master of any ship actually proceeding to Montreal or elsewhere above the harbour of Quebec, in charge of a pilot for and above the harbour of Quebec. R. S., c. 80, s. 49.

PILOTAGE DUES.

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471. No Customs officer shall grant a clearance to any ship liable to pilotage dues at any port in Canada, where there is a duly constituted pilotage authority which collects the pilotage dues and at which pilotage dues are payable, until there has been produced to such Customs officer a certificate from the pilotage authority of the district or some officer or person authorized by such to grant the same, that all pilotage dues in respect of such ship have been paid or settled for to the satisfaction of such authority. R. S., c. 80, s. 53.

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EMPLOYMENT OF PILOTS NOT COMPULSORY.

473. No owner or master of any ship shall, in any case, be compelled to employ or to give his ship into the charge of a pilot, either on the ground of his being compelled to pay pilotage dues to any person or otherwise. R. S., c. 80, s. 57.

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COMPULSORY PAYMENT OF PILOTAGE DUES AND EXEMPTIONS.

475. Every ship which navigates within either of the pilotage districts of Quebec, Montreal, Halifax or St. John, or within any pilotage district within the limits of which the payment of pilotage dues is, for the time being, made compulsory by order in council under this Part shall pay pilotage dues, unless,—

(*a*) such ship is on her inward voyage and no licensed pilot offers his services as a pilot; or,

(*b*) she is exempted under the provisions of this Part, from payment of such dues. R. S., c. 80, s. 58.

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476. If such ship is on her outward voyage and the owner or master of such ship does not employ a pilot or give his ship into the charge of a pilot, such dues shall be paid, if in the pilotage district of Quebec, to the Quebec Pilots Corporation, and, if in any other pilotage district to the pilotage authority of such district. R. S., c. 80, s. 58.

477. The following ships shall be exempted ships:—

(*a*) Ships belonging to His Majesty;

(*b*) Ships wholly employed in His Majesty's service, while so employed, the masters of which have been appointed by His Majesty's Government, either in the United Kingdom or in Canada;

(*c*) ships propelled wholly or in part by steam

(i) employed in trading from port to port in the same province, or

(ii) employed in trading between any one or more of the provinces of Quebec, New Brunswick, Nova Scotia or Prince Edward Island and any other or others of them, or

(iii) employed in voyages between any port or ports in the said provinces or any of them and the port of New York or any port of the United States of America on the Atlantic, north of New York, or

(iv) employed in voyages between any port in any of the said provinces and any port in Newfoundland, or

(v) having a draught when loaded not exceeding sixteen feet, and employed exclusively in voyages between any port or ports on Lake Ontario, Lake Erie, Lake Huron, Lake Superior, Lake Michigan or on any of the waters connecting those lakes and any port or ports on the river St. Lawrence, or between any ports on the river St. Lawrence;

(*d*) Ships registered in Canada, of not more than one hundred and twenty tons registered tonnage;

(*e*) Any ship of which the master or any mate has a certificate granted under the provisions of this Part and then in force, authorizing him to pilot such ship within the limits within which she is then navigating;

(*f*) Ships of such description and size not exceeding two hundred and fifty tons, registered tonnage, as the pilotage authority of the district, with the approval of the Governor in Council, from time to time determines to be exempt from the compulsory payment of pilotage dues in such district. * * *

R. S., c. 80, s. 59; 55–56 V., c. 20, s. 1; 2 E. VII., c. 27, s. 1.

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481. Every ship liable for pilotage dues and requiring the services of a pilot, arriving at the limits of any district in which the payment of pilotage dues is for the time being compulsory, shall,—

(*a*) until a licensed pilot has come on board; or,

(*b*) until the ship has passed a point, line or place, from time to time fixed in that behalf by the pilotage authority of the district,

display such signal for a pilot, as is in this Part provided.

(2) The master thereof, upon sighting a pilot boat carrying a pilot flag or pilot lights, shall also,—

(*a*) by lying to, if the weather permits, or by shortening sail or heaving to; or,

(*b*) if the ship is a steamer, by stopping his engines or by any other practicable means,

facilitate the coming on board of the pilot or one of the pilots of such boat. R. S., c. 80, s. 62.

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482. Every such ship as to which the requirements of the last preceding section are not complied with shall be liable to pay, if in the pilotage district of Quebec, to the Quebec Pilots Corporation, and, if elsewhere, to the pilotage authority of the district, a sum not exceeding the amount of pilotage dues which would be payable for piloting such ship.

(2) Every such ship, the master of which,—

(*a*) does not accept the services of the first licensed pilot who, by signal or otherwise, offers his services; or

(*b*) does not accept the services of such one of two or more pilots offering their services at the same time, as is entitled by the law or regulations for the time being in force in such district to have his services accepted; or,

(*c*) having signalled for a pilot, does not accept the services of any licensed pilot offering the same in consequence of such signal, shall be liable to pay, if in the pilotage district of Quebec, to the Quebec Pilots Corporation, and, if elsewhere, to the pilotage authority of the district, as pilotage dues, the same sum as would have been payable to such pilot, if his services had been accepted. R. S., c. 80, s. 62.

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PROCLAMATION OF PUBLIC HARBOURS.

849. The Governor in Council may by proclamation,—

(*a*) declare to be a public harbour any area covered with water within the jurisdiction of the Parliament of Canada; and,

(*b*) extend the area of any existing public harbour in Canada.

(2) Upon such proclamation being issued, all statutes, rules and regulations affecting such public harbour shall apply thereto as so extended. 57–58 V. c. 47, s. 1.

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APPOINTMENT OF HARBOUR MASTERS.

851. The Governor in Council may, from time to time, appoint a fit and proper person to be harbour master for any port to which this Part applies and may also appoint deputy harbor masters for any such port. 57–58 V., c. 50, s. 1.

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RULES AND REGULATIONS.

853. The Governor in Council may, from time to time, by regulation, define the rights, powers and duties of the harbour master in respect of the port for which he is appointed and determine his remuneration. R. S., c. 86, s. 6.

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855. The Governor in Council may by any such regulation impose—

(*a*) a penalty, not exceeding in any case one hundred dollars, for any violation of the same; and,

(*b*) in the case of a continuing violation, a further penalty not exceeding, in any case, ten dollars for every twelve hours during which such violation continues. R. S., c. 86, s. 7; 57–58 V., c. 47, s. 4.

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856. Every violation of any such regulation shall be deemed a violation of this Part, and every such penalty shall be held to be a penalty imposed by this Part, but no such regulation shall impose a minimum penalty. R. S., c. 86, s. 7; 57–58 V., c. 47.

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FEES.

862. For and in respect of all ships entering a port to which this Part applies, and at which a harbour master is appointed, and discharging or taking in cargo, ballast, stores, wood or water, there shall be paid as fees,—

(*a*) for every ship of fifty tons register or under, fifty cents;

(*b*) for every ship over fifty tons and not over one hundred tons register, one dollar;

(*c*) for every ship over one hundred tons and not over two hundred tons register, one dollar and fifty cents;

(*d*) for every ship over two hundred tons and not over three hundred tons register, two dollars;

(*e*) for every ship over three hundred tons and not over four hundred tons register, two dollars and fifty cents;

(*f*) for every ship over four hundred tons and not over five hundred tons register, three dollars;

(*g*) for every ship over five hundred tons and not over seven hundred tons register, four dollars;

(*h*) for every ship over seven hundred tons register, five dollars. R. S., c. 86, s. 11.

PROCLAMATIONS.

CANADIAN PROCLAMATION OF FEBRUARY, 1866.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, &c.

To all to whom these presents shall come, or whom the same may concern, greeting.

Whereas a certain Treaty was made between Her Majesty and The United States of America on the 5th of June, 1854, providing for reciprocal trade:

And whereas the United States of America have, in accordance with the terms of the said Treaty, given notice for the termination thereof; and whereas in consequence of such notice the said Treaty will expire on the 17th day of March, 1866:

And whereas under the said Treaty many persons, citizens of the United States of America, have invested moneys and fitted out ships for the purpose of carrying on the (inshore) fisheries within the territory of Canada under the said Treaty:

And whereas they may be unaware that their right to carry on such inshore fisheries will end on the said 17th day of March:

We, therefore, in our great desire to prevent injury or loss to our loving subjects, or to the citizens of a State with which we are happily in amity do in this our Royal Proclamation caution and warn all persons not subjects of our realm, that after the said 17th day of

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March next no vessels owned and manned in the United States of America can pursue the inshore fisheries without rendering themselves liable to the confiscation of their vessels, and such other penalties, pecuniary and personal, as are by law imposed.

ORDERS IN COUNCIL.

CANADIAN ORDER IN COUNCIL, JANUARY 8, 1870.

COPY of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council on the 8th. January, 1870.

The Committee having had under consideration the reports of the Minister of Marine and Fisheries dated respectively the 15th. and 20th. ult., in connection with certain despatches from Lord Granville, on the subject of protecting the fisheries of Canada, beg to recommend:

That the system of granting fishing licenses to foreign vessels under the Act 31 Victoria, C. 61, be discontinued, and that, henceforth, foreign fishermen be not permitted to fish in the waters of Canada.

Also, that six suitable sailing vessels, similar to "La Canadienne" in addition to the two vessels at present employed, to be chartered and equipped for the service of protecting the Canadian in-shore fisheries against illegal encroachments; these vessels to be connected with the Police Force of Canada, and to form a Marine Branch of the same.

They further recommend that Her Majesty's Government be requested to maintain, on the fishing stations of Canada, a sufficient naval force to prevent riotous combinations among foreign fishermen, and to protect the officers of the police in the execution of their duties.

With reference to Lord Granville's proposal to support the local force, by the presence of only one vessel of war, the Committee consider this measure of support would be inadequate, and hope that Her Majesty's Government may be induced to increase it.

Certified. W. H. LEE
Clerk Privy Council.

CANADIAN ORDER IN COUNCIL, SEPTEMBER 12, 1907, PROMULGATING FISHERY REGULATIONS.

By Order in Council of the 12th of September, 1907, in virtue of the provisions of section 54 of The Fisheries Act, chapter 45 of the Revised Statutes of Canada, 1906, the following fishery regulations were rescinded:—

The general fishery regulations for the province of Prince Edward Island; the general and special fishery regulations for the provinces of Nova Scotia and New Brunswick; the general fishery regulations for the provinces of Quebec and Ontario, and the regulations respecting navigable waters, all adopted by Order in Council on the 18th day of July, 1889; the regulations respecting the propagation of fish, adopted by Order in Council on the 2nd day of August, 1889; the regulations relating to fishing in Manitoba and the Northwest Territories, adopted by Order in Council on the 8th day of May, 1894; as

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well as any and all orders in council passed subsequently to the 18th day of July, 1889, establishing fishery regulations for the above mentioned provinces, and for the provinces of Saskatchewan and Alberta, the Northwest Territories and the Yukon District.

It was further ordered under the provisions of section 54 of The Fisheries Act, chapter 45 of the Revised Statutes of Canada, 1906, that the hereto appended fishery regulations be substituted in lieu of those above rescinded.

GENERAL FISHERY REGULATIONS.

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SPECIAL FISHERY REGULATIONS FOR THE PROVINCE OF QUEBEC.

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Sec. 2.—BAIT.

The Minister of Marine and Fisheries may authorize the issue of special permits to take Bait for the *bona fide* purpose of deep-sea fishing for any specified time during the weekly close time prescribed by the fishery laws.

* * * * * * *

Sec. 5.—COD.

No person shall carry on Cod-fishing with seines at a less distance than one half mile from any fishing grounds where fishing boats are anchored, and fishermen are actually engaged fishing for Codfish with hooks and lines.

Cod-fishing in the Gulf of St. Lawrence (Quebec).

1. Fishing by means of Cod trap-nets without a license from the Minister of Marine and Fisheries is prohibited in the waters of the Gulf of St. Lawrence.

2. Cod traps shall not be set near the mouth of any river frequented by salmon, or in such a manner or at such places, as to obstruct or interfere with the passage of salmon.

3. All Cod trap-nets shall be placed at distances of not less than two hundred and fifty yards apart, and no fishing apparatus of any kind shall be set, or used in or about any part of the water between Cod trap-nets. Provided always that any Fishery Officer may direct, either in writing or orally on sight that any greater space than two hundred and fifty yards shall be left between Cod trap-nets, and any Cod trap-nets or other fishing apparatus which the owner or person using the same neglects or refuses to remove in accordance with such directions, shall be deemed to be illegal and liable to forfeiture together with the fish caught therein, and the owner or person using the same shall also be subject to the fines and penalties provided by the Fisheries Act.

4. The leader of each Cod trap-net shall, in every case, extend from the shore, and any Fishery Officer may determine in writing, or orally, the length of the leader that shall be used.

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5. The pots of Cod trap-nets shall have meshes of at least four inches extension measure, and the leaders shall have meshes of at least six inches extension, and nothing shall be done to practically diminish the size of the meshes.

6. The fee on Cod trap-nets shall be fifty cents for each fathom in length of leader, and such fee shall be payable in advance.

7. The use of "jiggers" for the purpose of catching or killing Cod is prohibited.

8. All materials, implements, nets, appliances or gear of any kind used and all fish caught, taken, killed, bought, sold or possessed in violation of any of the above regulations shall be seized and confiscated, and any person or persons violating any of the above regulations shall also incur the other penalties provided by the Fisheries Act.

Sec. 6.—Deep Sea Fisheries, Magdalen Islands.

1. It shall be unlawful, during the season of Herring and Mackerel fishery in Pleasant Bay (Magdalen Islands), from the 1st of May to the 15th of June, to set any net or nets opposite the entrance of Amherst Harbour, that is to say: eastward a line drawn from the north-west end of the Cape bounding the mouth of said harbour to the east end of Cape Allright, as far as another line intersecting the same and bearing east south-east (magnetic) with the north Cape of Entry Island; and no person or persons shall be permitted at any time to set any net or nets in the middle of Sandy Hook Channel; nor shall any net or nets be set along the northern and western shores of Entry Island at more than one mile distant from the beach: Provided, however, that fishermen may lay their nets from Allright and Grindstone Islands towards Entry Island to within half a mile of those set upon the northern and western shores of said island, so as to leave always, for the purposes of navigation, a clear channel against the entrance into Amherst Harbour, and preserve free access to the bottom of Pleasant Bay for the schools of Herrings and Mackerel resorting thither to spawn.

2. No nets shall be set in the said bay nearer to each other than one hundred feet.

3. Whenever it shall be found impracticable to discover the owner or owners for the time being of any net or nets laid in contravention of these regulations, any fishery officer may, upon sight, proceed to remove the same from the place of obstruction.

4. It shall not be lawful to use, in any manner whatsoever, for the purpose of taking Codfish or Halibut, set-lines or bultow lines, within Pleasant Bay.

* * * * * * *

Sec. 8.—Herring.

1. (*a*) Fishing by means of herring trap-nets without a license from the Minister of Marine and Fisheries is prohibited in the waters of the Gulf of St. Lawrence.

(*b*) Herring trap-nets shall not be set near the mouth of any river frequented by salmon, or in such a manner, or at such places as to obstruct or interfere with the passage of salmon.

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(*c*) All herring trap-nets shall be placed at distances of not less than one-eighth of a mile apart, and no fishing apparatus of any kind shall be set or used in or about any part of the water between herring trap-nets: Provided always that any fishery officer may direct, either in writing, or orally on sight, that any greater space than one-eighth of a mile shall be left between herring trap-nets, and any herring trap-net or other fishing apparatus which the owner or person using the same neglects or refuses to remove in accordance with such directions, shall be illegal and liable to forfeiture, together with the fish caught therein, and the owner or person using the same shall also be liable to the fines and penalties provided by the Fisheries Act.

(*d*) The leader of each herring trap-net shall in every case extend from the shore, and any fishery officer may determine in writing, or orally, the length of leader that shall be used.

(*e*) The fee on herring trap-nets shall be fifty cents on each fathom in length of leader, and such fee shall be payable in advance.

2. The use of seines for the capture of herring is prohibited on that portion of the north shore of the Gulf of St. Lawrence, in the County of Saguenay, extending from Kegashka to Cape Whittle.

Sec. 9.—Leases and Licenses.

Fishing by means of nets or other apparatus without leases or licenses from the Minister of Marine and Fisheries, under the provisions of "The Fisheries Act" and section 8 thereof, or from some duly authorized officer of the Government of the Province of Quebec, is prohibited in the Province of Quebec.

CANADIAN ORDER IN COUNCIL, SEPTEMBER 9, 1908, AMENDING FISHERY REGULATIONS.

At the Government House at Ottawa. Wednesday, the 9th day of September, 1908.

Present: His Excellency the Governor General in Council.

His Excellency the Governor General in Council, in virtue of the provisions of section 54 of The Fisheries Act, chapter 45 of the Revised Statutes of Canada, 1906, is pleased to make and doth hereby make the following Fishery Regulation:—

The use or operation of vessels known as "Steam Trawlers" operating "beam," "otter," or other Trawls for the purpose of catching fish, is prohibited within the three mile limit and in the bays and harbours of Canada.

Rodolphe Boudreau,
Clerk of the Privy Council.

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COLONY OF NEWFOUNDLAND.

STATUTES.

ACT OF MARCH 27, 1862.

(25 Vict., cap. 2.)

AN ACT For the Protection of the Herring and Salmon Fisheries on the Coast of this Island, and for other Purposes.

Whereas the breed and fry of herrings frequenting the coast of this island and the Labrador are often found to be greatly injured and destroyed by the using of seines and nets of too small size or mesh, and by other unwarrantable practices; and whereas complaints have been preferred to the local Government of alleged depredations committed by the fishermen frequenting these coasts upon each other: for remedy whereof,

Be it therefore enacted, by the Governor, Legislative Council, and Assembly, in Session convened:—

I. That no person shall haul, catch, or take herrings in any seine, on or near any part of the coast of this island, or of its dependencies on the coast of Labrador, or in any of the bays, harbours, or any other places therein, at any time between the 20th day of October and the 12th day of April in any year; and no person shall, on or near the coast of this island or of its dependencies aforesaid on the coast of Labrador, or in any of the bays, harbours, or other places therein, at any time, use a seine or other contrivance for the catching and taking of herrings, except by way of shooting, and forthwith tucking and hauling the same: Provided that nothing herein contained shall prevent the taking of herrings by nets set in the usual and customary manner, and not used for in-barring or inclosing herrings in any cove, inlet, or other place.

II. No person shall, at any time between the 20th day of December and the 1st day of April in any year, haul, catch, or take any herring on or near the coast of this island or of its dependencies aforesaid on the Labrador, or in any of the bays, harbours, or any other places therein, in any net having the meshes, mokes, or scales of less than two inches and three-eighths of an inch, at least, from knot to knot, or having any false or double bottom of any description; nor shall any person put any net, though of legal size of mesh, upon or behind any other net not of such size of mesh, for the purpose of catching or taking the fry of such herring passing through any single net of two inches and three-eighths of an inch mesh or scale.

III. No person shall wilfully remove, destroy, or injure any lawful net or seine, the property of another, set or floating on or near the coasts of this island or of its dependencies aforesaid on the Labrador, or in any of the bays, harbours, or other places therein, nor remove, let loose, or take any fish from or out of any such lawful net or seine.

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IV. No person shall, at any time, between the 20th day of April and the 20th day of October, haul, catch, or take any herring or other bait for exportation within one mile of any settlement situate on that part of the coast between Cape Chapeau Rouge and Point Rosey.

V. Any person who shall violate any of the provisions of this Act shall for every offence forfeit a sum not exceeding ten pounds; and, in addition, all seines, nets, and other contrivances used or employed in, about, or preparatory to the catching, hauling, taking, or inbarring of any herrings, in violation of any of the provisions hereof, shall be liable to forfeiture, and the same may be seized at once by any Justice, Sub-Collector of Customs, Preventive Officer, or Constable, on view or by virtue of a warrant issued by such Justice, Sub-Collector, or Preventive Officer, on oath to be administered by any of them, and detained until the trial of the offender, when they may be declared forfeited and ordered to be sold at public auction.

VI. And whereas an Act was passed in the twenty-third year of the reign of Her present Majesty, entitled "An Act for the Protection of the Salmon Fishery, and for other purposes," whereby certain nets and seines were forbidden to be used, and certain weirs and other erections and contrivances were prohibited from being erected at certain times and under certain circumstances, in the said Act declared:

Be it further enacted, That it shall be lawful for any Justice, Sub-Collector, Preventive Officer, or Constable aforesaid, on view, and for any Constable or other person by virtue of a warrant to be issued as aforesaid, to seize any net or seine, and to destroy any weir or other erection or contrivance used or erected in contravention of the said recited Act, and all such nets and seines shall be forfeited and disposed of in manner provided by the Vth section of this Act.

VII. All forfeitures and penalties imposed by this or the said recited Act shall be recovered with costs, in a summary manner, before any Justice of the Peace, for which purpose such Justice shall have full power to summon or arrest the offender, and to compel all witnesses, either by summons or warrant, to appear before him on such trial; and upon conviction of such offender, such Justice shall issue his warrant to cause such seines, nets, or other contrivances so illegally used, to be sold at public auction, or, where permitted under the preceding section of this Act, destroyed; and in default of payment of such penalty as may be imposed, and costs, by the party convicted, such Justice shall issue his warrant to any constable or other person to arrest and imprison such convicted offender for a period not exceeding twenty days.

VIII. All penalties and forfeitures under this or the said recited Act, and all proceeds thereof, when recovered, shall be paid to the party informing against and prosecuting such offender to conviction.

IX. No conviction or proceeding by any Justice or other officer under this Act shall be quashed or set aside for want of form, so long as the same shall be substantially in accordance with the true intent and meaning of this Act.

X. Provided always, That nothing in this Act contained shall in any way affect or interfere with the rights and privileges granted by Treaty to the subjects or citizens of any State or Power in amity with Her Majesty.

XI. The ninth section of the said recited "Act for the Protection of the Salmon Fishery" is hereby repealed.

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CONSOLIDATED STATUTES, 1872, CHAPTER 102.

OF THE COAST FISHERIES.

1. No person shall haul, catch, or take herrings by, or in, a seine or other such contrivance on or near any part of the coast of this Colony or of its dependencies, or in any of the bays, harbours, or other places therein, at any time between the 20th day of October and the 12th day of April in any year, or at any time use a seine or other contrivance for the catching and taking of herrings, except by way of shooting and forthwith hauling the same: Provided that nothing herein contained shall prevent the taking of herrings by nets set in the usual and customary manner, and not used for in-barring or inclosing herrings in a cove, inlet, or other place.

2. No person shall, at any time between the 20th day of December and the 1st day of April in any year, use any net to haul, catch, or take herrings on or near the coasts of this Colony or of its dependencies, or in any bays, harbours, or other places therein, having the mokes, meshes, or scales of such net less than two inches and three-eighths of an inch at least, or having any false or double bottom of any description; nor shall any person put any net, though of legal size mesh, upon or behind any other net not of such size mesh, for the purpose of catching or taking such herring or herring fry passing a single net of legal size mesh.

3. No person shall wilfully remove, destroy, or injure any lawful net or seine, the property of another, set or floating on or near the coast of this Colony or its dependencies, or any of the bays, harbours, or other places therein, or remove, let loose, or take any fish from such seine or net.

4. No person shall, between the 20th day of April and the 20th day of October in any year, haul, catch, or take herrings or other bait for exportation, within one mile, measured by the shore or across the water, of any settlement situate between Cape Chapeau Rouge and Point Enragee, near Cape Ray; and any person so hauling, catching, or taking, within the said limits, may be examined on oath by a Justice, officer of Customs, or person commissioned for the purpose, as to whether the herrings or other bait are intended for exportation or otherwise, and on refusal to answer or answering untruly, such person shall, on conviction, be subject to the provisions of the twelfth section of this chapter.

5. No person shall, by spearing or sweeping with nets or seines, take or attempt to take, any salmon, grilse, par, or trout, in any bay, river, stream, cove, or watercourse, above where the tide usually rises and falls, or in any pond or lake.

6. No stake, seine, weir, or other contrivance for taking salmon, except nets set or placed across, shall be set or placed in any river, stream, cove, lake, or watercourse. No net shall extend more than one-third of the distance in a straight line across, and all nets shall be set only on one side of such river, stream, cove, lake, or watercourse.

7. No person shall construct any mill-dam, weir, rack, frame, train-gate, or other erection or barrier in or across any river, stream, cove, lake, or watercourse, so as to obstruct the free passage of salmon, grilse, par, trout, or other fish resorting thereto for the purpose of spawning; and all mill-dams or other erections placed on, over, or across any watercourse, river, or stream, resorted to by fish for

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the purpose of spawning, shall have a waste gate opening, or slope sufficient to constitute a proper and sufficient fish way, which shall be kept in repair by the owner. No person shall permit any sawdust or mill rubbish to be cast into any such river, stream, cove, lake, or watercourse.

8. No person shall use any net for taking salmon, the mokes, meshes, or scales of which are less than four inches and a half inch.

9. No person shall buy or sell or have in his possession, salmon, knowing the same to have been taken contrary to the provisions of this chapter, and every salmon so taken, bought, or sold, shall be declared forfeited to the complainant by any Justice.

10. No net shall be moored or set in any harbour, cove, creek, or estuary, or on or near any part of the coast of this Colony, or its dependencies, for the purpose of taking salmon, nearer to any other net moored or set for a like purpose than one hundred yards for a single net, and three hundred yards for a double net or fleet of nets.

11. No salmon shall be taken before the 1st day of May or after the 10th day of September in any year: Provided that if the time limited in this section shall be found to operate injuriously in any part of this island, the Governor in Council may appoint any other time or times, and such time or times shall be as binding on all persons as if specially mentioned herein.

12. Any person who shall violate any of the provisions of this chapter shall be subject to a penalty not exceeding fifty dollars, and all seines, nets, and other contrivances used contrary to the provisions of this chapter shall be forfeited, and may be seized and detained until the trial of the offender by any Justice, Sub-Collector of Customs, Preventive Officer, Fishery Warden, or Constable, on view, or by virtue of a warrant issued by such Justice, Sub-Collector, or Preventive Officer, upon complaint made on oath to be administered by either of them, and, upon conviction, the same may be declared forfeited and ordered to be sold at public auction.

13. Any Justice, Sub-Collector, Preventive Officer, Fishery Warden, or Constable, may, on view, destroy any weir, rack, frame, train-gate, or other erection or barrier, used or erected contrary to the provisions of this chapter, or the same may be destroyed by virtue of a warrant issued by any Justice, Sub-Collector, or Preventive Officer, upon complaint made on oath to be administered by either of them.

14. All forfeitures and penalties imposed by this chapter shall be recovered, with costs, in a summary manner before any Justice, for which purpose such Justice may summon or arrest the offender, and compel witnesses, by summons or warrant, to appear before him; and upon conviction of the offender, such Justice shall cause all seines, nets, and other contrivances illegally used, to be sold by public auction, or, where permitted under the provisions of the preceding sections of this chapter, destroyed; and in default of the payment of any penalty imposed, and costs, such Justice shall issue his warrant and cause such offender to be arrested and imprisoned for any period not exceeding twenty days.

15. All penalties and forfeitures imposed by this chapter, and the proceeds thereof, shall be paid to the party informing against and prosecuting the offender to conviction.

16. No proceeding or conviction by any Justice or other officer under this chapter shall be quashed or set aside for any informality,

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provided the same shall be substantially in accordance with the intent and meaning of this chapter.

17. The Governor in Council may appoint the Collector of Revenue for Labrador, or other person, to be Superintendent of the Fisheries on the coast of this island and its dependencies, and may also appoint Fishery Wardens, and prescribe their duties for the purposes of this chapter. The compensation for the services of such officers to be provided by the Legislature.

18. Nothing in this chapter shall affect the rights and privileges granted by Treaty to the subjects of any State or Power in amity with Her Majesty.

ACT OF MARCH 28, 1874.

(37 Vict., cap. 2.)

ACT to carry into effect the provisions of the Treaty of Washington,[a] as far as they relate to that Colony. (Fisheries.)

Whereas a Treaty between Great Britain and the United States of America was signed at Washington on the 8th day of May, 1871, and was duly ratified on the 17th day of June in that year, containing the following Articles, viz.:

It is further agreed that the provisions and stipulations of Articles XVIII to XXV of this Treaty inclusive shall extend to the Colony of Newfoundland, so far as they are applicable; but if the Imperial Parliament, the Legislature of Newfoundland, or the Congress of The United States, shall not embrace the Colony of Newfoundland in their laws enacted for carrying the foregoing Articles into effect, then this Article shall be of no effect; but the omission to make provision by law to give it effect by either of the Legislative Bodies aforesaid shall not in any way impair any other Articles of this Treaty.

Be it therefore enacted, by the Governor, Legislative Council, and Assembly, in Legislative Council convened, as follows:

1. The Governor may, at any time hereafter, by his proclamation, to be published in the "Royal Gazette" of this colony, declare that, after a time to be therein named, the provisions and stipulations of the said Articles XVIII to XXV of the said Treaty inclusive, as set forth in the Schedule to this Act, shall extend to this Colony of Newfoundland, so far as they are applicable; and at the time so named in such Proclamation the provisions and stipulations of the said Articles shall come into full force, operation, and effect in this colony, so far as the same are applicable, and shall thenceforth so continue in full force, operation and effect during the period mentioned in Article XXXIII of the said Treaty, recited in the Schedule to this Act, any law of this colony to the contrary notwithstanding.

2. The Governor in Council may, by any order or orders to be made for that purpose, do any act or thing in accordance with the spirit and intention of the said Treaty, which shall be found necessary to be done on the part of this colony, to give full force, operation, and effect to the said Treaty; and any such order shall have the same effect as if the same were expressly enacted in this Act.

3. This Act shall not come into operation until her Majesty's assent thereto shall have been given, and shall remain in force during the term of years mentioned in Article XXXIII in the Schedule to this Act.

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[a] On May 5, 1873, an act was passed by the legislature of Newfoundland, entitled "An act relating to the treaty of Washington, 1871", which was repealed by an act dated April 29, 1874. (See British and Foreign State Papers, Vol. LXIII, page 38, and Vol. LXV, pages 1304–1305.)

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ACT OF APRIL 26, 1876.

(39 Vict., cap. VI.)

AN ACT To amend the law relating to the coast fisheries.

Be it enacted by the governor, legislative council and assembly, in legislative session convened, as follows:

I. The first section of chapter one hundred and two of the Consolidated Statutes is hereby amended, by substituting the words "twenty-fifth day of April" for the "twelfth day of April."

II. The fourth section of the said chapter is hereby amended by substituting the words "tenth day of May" for "twentieth day of April."

III. No person shall, at any time, haul, catch, or take squids, with, in, or by means of any seine, bunt, or other such contrivance.

IV. No person shall, between the hours of twelve o'clock on Saturday night and twelve o'clock on Sunday night, haul or take any herring, caplin or squids, with nets, seines, bunts, or any such contrivance, or set or put out any such net, seine, bunt, or contrivance for the purpose of such hauling or taking.

V. Any person violating the provisions of this act shall be subject to the same penalties as are provided by section twelve of the said chapter.

ACT OF APRIL 26, 1877.

(40 Vict., cap. XIII.)

AN ACT For the amendment of an act entitled "An act to amend the law relating to the coast fisheries."

Whereas it is expedient to amend the act thirty-nine Victoria, chapter six, entitled "An act to amend the law relating to the coast fisheries," in manner hereinafter provided.

Be it enacted by the governor, legislative council and assembly, in legislative session convened, as follows:

I. That the fourth section of the said recited act shall be held to include and apply to the jigging of squids, and to the use of any contrivance whatever, and to any mode of taking and obtaining fish for bait.

ACT OF MARCH 19, 1879.

(42 Vict., cap. 2.)

AN ACT To amend the law relating to the coast fisheries.

Be it enacted by the governor, legislative council and assembly, in legislative session convened, as follows:

I. No person shall haul, catch or take herrings by or in a seine or other such contrivance, on or near any part of the coast of this colony or its dependencies, or in any of the bays, harbors or other places therein, at any time between the twentieth day of October in any year, and the eighteenth day of April in the following year, or at any time use a seine or other contrivance for the catching and taking of herrings,

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except by way of shooting and forthwith hauling the same: Provided, that nothing herein contained shall prevent the taking of herrings by nets set in the usual and customary manner, and not used for inbarring or enclosing herrings in a cove, inlet, or other place.

II. Section one of chapter one hundred and two, of title twenty-seven, of the Consolidated Statutes, entitled "of the coast fisheries," and section one of an act passed in the thirty-ninth year of the reign of Her present Majesty, entitled "An act to amend the law relating to the coast fishes," are hereby repealed.

III. Section twelve of chapter one hundred and two, title twenty-seven, of the Consolidated Statutes, is hereby amended, by substituting the words "two hundred dollars" for the words "fifty dollars."

IV. The owners, masters, and other persons managing or controlling vessels conveying herrings in bulk between the twentieth day of October in any year and the eighteenth day of April in the following year, shall be deemed to have hauled, caught, or taken such herring contrary to the provisions of chapter one hundred and two of the Consolidated Statutes, as amended by the said above recited act, thirty-nine Victoria, chapter six, and by this act, unless such owner, master, or other person aforesaid shall make proof to the contrary before a justice of the peace.

V. Any justice of the peace, sub-collector of customs, preventive officer, fishery warden, or constable, may board any vessel suspected of carrying herrings in bulk between the twentieth day of October in any year, and the eighteenth day of April in the following year; and in case any such justice, sub-collector, preventive officer, fishery warden, or constable, shall make signal to any vessel suspected as aforesaid, from any vessel employed by the government, by dipping the ensign at the main peak three times, and firing a gun, it shall be the duty of the owner, master or person managing or controlling such vessel so signalled, to heave to such vessel until such justice, sub-collector, preventive officer, fishery warden, or constable, shall have boarded and examined such last-named vessel; and in case of such master, owner, or person managing or controlling as aforesaid such last-named vessel omitting so to heave her to, or to afford facilities for such justice, sub-collector, preventive officer, fishery warden, or constable, boarding such vessel, or obstructing such justice, sub-collector, preventive officer, fishery warden, or constable, boarding or examining any such vessel, he shall be subject to a penalty of five hundred dollars, to be recovered with costs in a summary manner before a justice of the peace, and in case default shall be made in the payment of such penalty, such justice shall issue his warrant and cause such offender to be imprisoned for a period not exceeding thirty days.

VI. If any person shall feel himself aggrieved by any order or judgment of such justice under this act, or under the said chapter, he shall have liberty to appeal to the Supreme Court in St. John's or on circuit, upon giving sufficient security for the due performance of such order or judgment, if confirmed, and for the payment of all costs, and to prosecute the said appeal.

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CONSOLIDATED STATUTES, 1879, CHAPTER 102.

OF THE COAST FISHERIES.

I. No person shall haul, catch, or take herrings by or in a seine or other such contrivance on or near any part of the coast of this colony or of its dependencies, or in any of the bays, harbors, or other places therein, at any time between the 20th day of October and the 25th day of April in any year, or at any time use a seine or other contrivance for the catching and taking of herrings, except by way of shooting and forthwith hauling the same: *Provided*, that nothing herein contained shall prevent the taking of herrings by nets set in the usual and customary manner, and not used for inbarring or inclosing herrings in a cove, inlet, or other place.

II. No person shall, at any time between the 20th day of December and the 1st day of April in any year, use any net to haul, catch, or take herrings on or near the coasts of this colony or of its dependencies, or in any bays, harbors, or other places therein, having the mokes, meshes, or scales of such net less than two inches and three-eighths of an inch at least, or having any false or double bottom of any description; nor shall any person put any net, though of legal size mesh, upon or behind any other net not of such size mesh, for the purpose of catching or taking such herring or herring fry passing a single net of legal-size mesh.

III. No person shall willfully remove, destroy, or injure any lawful net or seine, the property of another, set or floating on or near the coast of this colony or its dependencies, or any of the bays, harbors, or other places therein, or remove, let loose, or take any fish from such seine or net.

IV. No person shall, between the 20th day of May and the 20th day of October in any year, haul, catch, or take herrings or other bait for exportation, within one mile measured by the shore or across the water of any settlement situate between Cape Chapeau Rouge and Point Enragee, near Cape Ray; and any person so hauling, catching or taking, within the said limits, may be examined on oath by a justice, officer of customs, or person commissioned for the purpose, as to whether the herrings or other bait are intended for exportation or otherwise, and on refusal to answer, or answering untruly, such person shall, on conviction, be subject to the provisions of the twelfth section of this chapter.

V. No person shall, by spearing or sweeping with nets or seines, take, or attempt to take, any salmon, grilse, par, or trout, in any bay, river, stream, cove, or water-course, above where the tide usually rises and falls, or in any pond or lake.

VI. No stake, seine, weir, or other contrivance for taking salmon, except nets set or placed across, shall be set or placed in any river, stream, cove, lake, or watercourse. No net shall extend more than one-third of the distance in a straight line across, and all nets shall be set only on one side of such river, stream, cove, lake, or watercourse.

VII. No person shall construct any mill-dam, weir, rack, frame, traingate, or other erection or barrier in or across any river, stream, cove, lake, or watercourse, so as to obstruct the free passage of salmon, grilse, par, trout, or other fish resorting thereto, for the purpose of spawning; and all mill-dams or other erections placed on, over or

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across any watercourse, river or stream resorted to by fish for the purpose of spawning, shall have a waste gate opening, or slope sufficient to constitute a proper and sufficient fish way, which shall be kept in repair by the owner. No person shall permit any sawdust or mill rubbish to be cast into any such river, stream, cove, lake or watercourse.

VIII. No person shall use any net for taking salmon, the mokes, meshes, or scales of which are less than four inches and a half inch.

IX. No person shall buy or sell or have in his possession salmon, knowing the same to have been taken contrary to the provisions of this chapter, and every salmon so taken, bought or sold, shall be declared forfeited to the complainant by any justice.

X. No net shall be moored or set in any harbor, cove, creek or estuary, or on or near any part of the coast of this colony or its dependencies, for the purpose of taking salmon nearer to any other net moored or set for a like purpose than one hundred yards for a single net, and three hundred yards for a double net or fleet of nets.

XI. No salmon shall be taken before the first day of May or after the tenth day of September in any year: Provided that if the time limited in this section shall be found to operate injuriously in any part of this island, the governor in council may appoint any other time or times, and such time or times shall be as binding on all persons as if specially mentioned herein.

XII. Any person who shall violate any of the provisions of this chapter shall be subject to a penalty not exceeding two hundred dollars, and all seines, nets, and other contrivances used contrary to the provisions of this chapter shall be forfeited, and may be seized and detained until the trial of the offender by any justice, sub-collector of customs, preventive officer, fishery warden, or constable, on view, or by virtue of a warrant issued by such justice, sub-collector or preventive officer, upon complaint made on oath to be administered by either of them, and, upon conviction, the same may be declared forfeited and ordered to be sold at public auction.

XIII. Any justice, sub-collector, preventive officer, fishery warden, or constable, may, on view, destroy any weir, rack, frame, train-gate or other erection or barrier, used or erected contrary to the provisions of this chapter, or the same may be destroyed by virtue of a warrant issued by any justice, sub-collector, or preventive officer, upon complaint made on oath to be administered by either of them.

XIV. All forfeitures and penalties imposed by this chapter shall be recovered with costs in a summary manner before any justice, for which purpose such justice may summon or arrest the offender, and compel witnesses, by summons or warrant, to appear before him; and, upon conviction of the offender, such justice shall cause all seines, nets, and other contrivances illegally used, to be sold by public auction, or, where permitted under the provisions of the preceding sections of this chapter, destroyed; and in default of the payment of any penalty imposed, and costs, such justice shall issue his warrant and cause such offender to be arrested and imprisoned for any period not exceeding twenty days.

XV. All penalties and forfeitures imposed by this chapter, and the proceeds thereof, shall be paid to the party informing against and prosecuting the offender to conviction.

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XVI. No proceeding or conviction by any justice or other officer under this chapter shall be quashed or set aside for any informality, provided the same shall be substantially in accordance with the intent and meaning of this chapter.

XVII. The governor in council may appoint the collector of revenue for Labrador, or other person, to be superintendent of the fisheries on the coast of this island and its dependencies, and may also appoint fishery wardens, and prescribe their duties for the purpose of this chapter. The compensation for the services of such officers to be provided by the legislature.

XVIII. Nothing in this chapter shall affect the rights and privileges granted by treaty to the subjects of any state or power in amity with Her Majesty.

ACT OF FEBRUARY 21, 1887.

(50 Vict., cap. 1.)

AN ACT To regulate the Exportation and Sale of Herring, Capelin, Squid, and other Bait Fishes.

Whereas in the interests of the fisheries of this Colony, and for the preservation of the bait necessary for the pursuit of these fisheries, it is essential to regulate the exportation and sale of such bait:

Be it therefore enacted by the Governor, the Legislative Council, and Assembly in Legislative Session convened as follows:—

1. No person shall—

(1.) Export or cause or procure to be exported or assist in the exportation of, or

(2.) Haul, catch, purchase, or sell for the purpose of exportation, or

(3.) Sell or purchase for the purpose of sale

any herring, capelin, squid, or other bait fishes from on or near any parts of this Colony or of its dependencies, or from or in any of the bays, harbours, or other places therein, without a special license in writing obtained from the Receiver-General of this Colony, which license may be in the form set forth in the Schedule hereto annexed, and shall be of no avail beyond the fishing season for which it is granted.

2. Any person found hauling, catching, or taking, shipping, or conveying any of the said fishes within the said limits, or any person having any of the said fishes in possession, may be examined on oath by a Justice of the Peace, officer of Customs, Fishery Warden, or person commissioned for the purpose, as to whether such herring, capelin, squid, or other bait fishes are intended for exportation or sale, and on refusing to answer, or answering untruly, or failing to produce a license as above mentioned, such Justice, officer of Customs, Fishery Warden, or person commissioned as aforesaid may seize the vessel in or on board of which such herring, capelin, squid, or other bait fishes shall have been hauled or caught or put, kept, shipped, carried, or conveyed, or on board of which the same may have been found, her tackle, apparel, furniture, and outfit, and bring the same before any Stipendiary Magistrate, and the person so refusing to answer, answering untruthfully, or failing to produce the said license, shall be guilty of an offence against this Act.

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3. The license provided for in the first section shall be issued under the authority of the Governor in Council, and shall be countersigned by the Colonial Secretary.

4. If any person shall forge or counterfeit or procure to be forged or counterfeited the signature of the Receiver-General to any such license as mentioned in the next preceding section, or shall tender or offer in response to inquiries made under the provisions of this Act, or in evidence in any prosecution under this Act, any such license knowing the signature thereto to be false or counterfeit, such person shall be deemed to be guilty of an offence against this Act.

5. Every person guilty of a violation of any of the provisions of this Act shall, for the first offence, be liable to a fine not exceeding 1,000 dollars, and in default of payment of any such penalty to imprisonment for a period not exceeding six months, and for the second or any subsequent offence to imprisonment for a period not exceeding twelve months.

6. All offenders against the provisions of this Act may be prosecuted and convicted, and all fines incurred under the provisions of this Act may be sued for and recovered in a summary manner before a Stipendiary Magistrate by any person who may sue for the same; one half of such fine shall go to the party who may prosecute the offender, and the remainder to the Receiver-General for the use of the Colony; and in the event of the prosecution of an offender who, under this Act, would not be liable to or ordered to pay a fine, then the reasonable expenses of the prosecutor, including a fair amount for his time and labour expended in and about such prosecution, shall, on the certificate of the Magistrate who heard the cause, be paid to the prosecutor by the Receiver-General.

7. If any person convicted under this Act shall feel himself aggrieved by such conviction, he may appeal therefrom to the then next sitting of Her Majesty's Supreme Court holden in or nearest to the place where such conviction shall have been had: Provided notice of such appeal, and of the cause and matter thereof, be given to the convicting Magistrate in writing within seven days next after such conviction; and the party desiring to appeal shall also, within fourteen days after such notice given, enter into recognizance with two approved sureties before the convicting Magistrate conditioned for the appearance of the person convicted at such next sitting of the Supreme Court, on the first day of such sitting, for the prosecution of the appeal with effect and without delay, to abide the Judgment of the Court thereon, and to pay such costs as the Court shall award. Any person who shall be convicted and imprisoned by any such Magistrate for an offence against this Act, and who shall have given such notice of appeal, and shall have entered into such recognizance with approved sureties, may be discharged from prison, in which case the recognizance shall be further conditioned for the surrender of the convicted party on the first day of such next sitting of the Supreme Court to the Sheriff of the district in which such appeal shall be heard.

8. No proceeding or conviction by, or order of, any Justice or other officer under this Act shall be quashed or set aside for any informality, provided the same shall be substantially in accordance with the intent and meaning of this Act.

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9. Any person who shall violate any of the provisions of this Act, in addition to the penalties provided in the 5th section hereof, shall be liable to have his vessel, or the vessel used by him, seized in manner aforesaid, her tackle, apparel, furniture, and outfit forfeited and sold by public auction.

10. In this Act the word "vessel" shall include any boat or ship, registered or not registered, jack, skiff, punt, and launch, whether propelled by sails, oars, or steam.

11. Nothing in this Act shall affect the rights and privileges granted by Treaty to the subjects of any State in amity with Her Majesty.

ACT OF MAY 9, 1888.

(51 Vict., cap. 9.)

AN ACT To amend an Act passed in the 50th year of the Reign of Her present Majesty, entitled "An Act to regulate the Exportation and Sale of Herring, Capelin, Squid, and other Bait Fishes."

Whereas it is desirable to make further provision for carrying into effect the objects of the Act 50 Vict., cap. 1, entitled "An Act to regulate the Exportation and Sale of Herring, Capelin, Squid, and other Bait Fishes," and to remove doubts in relation thereto.

Be it therefore enacted by the Governor, the Legislative Council, and House of Assembly, in Legislative Session convened, as follows:—

1. In the construction of the said Act, the terms "export" and "exportation" shall be held to signify a conveyance to any place and for any purpose outside of or beyond the limits of the territorial waters of this Colony or its dependencies.

2. The Governor in Council may authorize the issue of licenses to purchase herring, capelin, squid, or other bait fishes, to be used by the purchasers, *bonâ fide*, for the purposes of bait in the prosecution of the fishery upon, or adjacent to, the coasts of this Colony or its dependencies, or of the Bank fishery.

3. Every license granted under the authority of this Act, and of the above-recited Act, shall state the name of the person to whom it is granted, of the vessel in which it is intended to export bait or to carry on the fishery, of the country or place to which it is intended to export bait, or the fishery which is intended to be prosecuted, or for which bait is required, the place (as nearly as may be) where such fishery is to be prosecuted, and the period for which such license is to be available, which shall not in any case extend beyond the then present fishing season; and the form prescribed in the Schedule to the said Act may be amended and adapted to the circumstances herein provided, and every sale to a person holding and producing a license issued under this Act, or the said Act, *bonâ fide*, for the purposes therein specified, shall be lawful.

4. All licenses issued under the authority of this Act shall be signed by a Customs officer, and countersigned by a Stipendiary Magistrate.

5. Application for licenses under this Act and the said above-recited Act may be made to a Stipendiary Magistrate or Customs officer, who shall require the applicant to make before him an affi-

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davit in the form set forth in the Schedule to this Act, stating the facts and particulars as required to be set forth in such license under section 3 of this Act; and it shall be the duty of the said Stipendiary Magistrate or Customs officer to report to the Governor in Council any refusal on the part of the applicant to make such affidavit, or any *bonâ fide* doubt on the part of such Stipendiary Magistrate or Customs officer of the truth of any of the statements set forth in such affidavit, or of a belief on his part that such license is applied for for the purpose of evading or defeating, or assisting in evading or defeating, the provisions of this Act, or of the above-recited Act.

6. Any person who, having obtained a license under the provisions of the said Act, or of this Act, shall depart from, exceed, or violate the terms or conditions thereof, shall be liable to the same penalties as are provided in, and by, the said Act for violation of the provisions thereof, and, in addition to such penalties, to a forfeiture of the license.

7. The Governor in Council may, at any time, by Proclamation, suspend or limit the operation of the provisions of said Act in relation to any district or part of this Colony, or the coasts thereof, and for such period, and in relation to sale or exportation to such places or to such purposes, as shall appear expedient, and as shall be declared and defined in such Proclamation.

8. The first section of the said Act is hereby amended, by inserting after the word "therein," in subsection 3 of said section, the words "for bait purposes."

CONSOLIDATED STATUTES, 1892, CHAPTER 119.

OF PILOTS AND PILOTAGE FOR THE PORT OF ST. JOHN'S.

14. All ships and vessels shall be obliged to take or pay a pilot, except Her Majesty's ships, vessels belonging to a royal yacht club, coasting vessels, and vessels which have not been boarded, hailed or spoken until after they have entered the Narrows; and no vessel shall be deemed to be a coasting vessel and exempt from the liability of taking a pilot unless such vessel shall have been usually employed as a bona fide coaster, or if such vessel shall have on board any part of a cargo imported in such vessel from any port or place out of this colony, or if such vessel shall be going to any place out of this colony or to any outport to load a cargo for any foreign market; Provided that when, in consequence of stormy weather, extreme danger would arise to any boat going outside the Narrows, the commissioners may award pilotage to any pilot who shall in such case have offered his services within the Narrows and have been rejected. For the purposes of this chapter the entrance to the Narrows shall be defined by a line drawn from the Northern Head to the Southern Head at the entrance of this port.

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CONSOLIDATED STATUTES, 1892, CHAPTER 120.

OF HARBOUR MASTER AND HARBOUR REGULATIONS FOR THE PORT OF ST. JOHN'S.

2. The following amounts, as harbour dues, shall be paid by vessels arriving at the port of St. John's, at the time of their being entered at the Custom House, except ships of war and vessels engaged in the coasting trade and fishing, viz;

Every vessel of sixty tons and upwards, and not more than one hundred tons, two dollars.

Every vessel of more than one hundred tons, and not more than two hundred tons, three dollars.

Every vessel of more than two hundred tons, and not more than three hundred tons, four dollars.

Every vessel of more than three hundred tons, and not more than four hundred tons, five dollars.

Every vessel of more than four hundred tons, six dollars.

Provided that no vessel shall be compelled to pay harbour dues more than once in every half year—viz:, once between the first day of January and thirtieth day of June, and once between the thirtieth day of June and first day of January.

CONSOLIDATED STATUTES, 1892, CHAPTER 121.

OF OUTPOST PILOTS AND PILOTAGE.

1. The Governor in Council shall have power, from time to time, to cause the provisions of this chapter to apply to such of the ports of this colony as he may deem expedient. The ports to which the same shall apply shall be declared by proclamation of the Governor, to be published in the Royal Gazette, and the date from which the same shall take effect shall also be stated in such proclamation, and shall be not less than six months from the publication thereof.

2. For each of the ports of this colony to which the provisions of this chapter have been or shall be applied as aforesaid, there shall be three Commissioners of Pilots, of whom two shall be a quorum, who shall act gratuitously. The appointment of such Commissioners shall be in the Governor in Council. Every Commissioner shall take the following oath before a Judge or Magistrate:—

"I, A. B., do swear that I will act diligently, faithfully and impartially, in the selection and examination of pilots for the port of ———."

* * * * * * *

12. All ships and vessels, except Her Majesty's ships, vessels belonging to the Royal Yacht Club, coasting and fishing vessels, which have not been boarded until they have come within the limits fixed by the Commissioners, shall be obliged to take or pay a pilot; and no vessel shall be deemed to be a coasting vessel and exempt from the liability of taking a pilot, unless such vessel shall have been usually employed as a bona fide coaster, or if such vessel shall have on board any part of a cargo imported in such vessel from any port or place out of this colony, or if such vessel shall be going to any

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place out of this colony, or to any outport to load a cargo for any foreign market: Provided that, when in consequence of stormy weather, extreme danger would arise to any boat going outside the limits aforesaid, the Commissioners may award pilotage to any pilot who shall in such case have offered his services within the limits aforesaid, and have been rejected.

CONSOLIDATED STATUTES, 1892, CHAPTER 124.

OF THE COAST FISHERIES.

1. No person shall haul, catch or take herrings by or in a seine or other such contrivance, on or near any part of the coast of this colony or its dependencies, or in any of the bays, harbours, or other places therein, at any time between the twentieth day of October in any year, and the eighteenth day of April in the following year, or at any time use a seine or other contrivance for the catching or taking of herring, except by way of shooting and forthwith hauling the same, under a penalty not exceeding two hundred dollars: Provided that nothing herein contained shall prevent the taking of herrings by nets set in the usual and customary manner, and not used for in-barring or enclosing herrings in a cove, inlet or other place. This section shall not apply to the coast of Labrador.

2. The owners, masters, and other persons managing or controlling vessels conveying herrings in bulk, between the twentieth day of October in any year, and the eighteenth day of April in the following year, shall be deemed to have hauled, caught or taken such herrings contrary to the provisions of the preceding section of this chapter, unless such owner, master or other person aforesaid shall make proof to the contrary.

3. Any Justice of the Peace, Sub-collector of the Customs, Preventive Officer, Fishery Warden or Constable, may board any vessel suspected of carrying herrings which have been taken contrary to the provisions of section one of this chapter; and in case any such Justice, Sub-collector, Preventive Officer, Fishery Warden or Constable shall make signal to any vessel suspected as aforesaid, from any vessel employed by the Government by dipping the Ensign at the main peak three times and firing a gun, it shall be the duty of the owner, master, or person managing or controlling such vessel so signalled, to heave-to such vessel until such Justice, Sub-collector, Preventive Officer, Fishery Warden or Constable shall have boarded and examined such last-named vessel; and in case of such master, owner, or person managing or controlling as aforesaid, such last-named vessel omitting so to heave her to, or to afford facilities for such Justice, Sub-collector, Preventive Officer, Fishery Warden or Constable to board and examine such vessel, or obstructing such Justice, Sub-collector, Preventive Officer, Fishery Warden or Constable boarding or examining any such vessel, he shall be subject to a penalty of five hundred dollars, to be recovered with costs in a summary manner before a Justice of the Peace, and in case default shall be made in the payment of such penalty, such Justice shall issue his warrant and cause such offender to be imprisoned for a period not exceeding thirty days.

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4. No person shall, at any time between the twentieth day of December in any year and the first day of April in the following year, use any net to haul, catch or take herrings on or near the coasts of this Colony or its dependencies, or in any bays, harbours or other places therein, having the mokes, meshes, or scales of such net less than two inches and three-eighths of an inch at least, or having any false or double bottom of any description; nor shall any person put any net, though of legal size mesh, upon or behind any other net not of such size mesh, for the purpose of catching or taking such herring or herring fry passing a single net of legal size mesh, under a penalty not exceeding two hundred dollars.

5. Notwithstanding any of the provisions of this chapter it shall be lawful for the owner of any vessel owned and registered in this Colony, which shall be fully fitted out, supplied and ready to prosecute the Bank fishery, and shall have obtained a Custom's clearance for the said fishery, to haul, catch and take herring at any time and by any means, except by in-barring or enclosing such herring in a cove, inlet or other place, to an extent not exceeding sixty barrels for any one voyage, to be used as bait in prosecuting the said Bank fishery in the said vessel.

6. The owner or master of any vessel who shall avail of the preceding section of this chapter, and having procured herring for bait as therein provided, after clearing for the Bank fishery, shall enter any port before the nineteenth day of April thence next following, except compelled by stress of weather, accident, or in case of sickness, or who shall dispose of the herring so taken for bait in any way except for prosecuting the Bank fishery in said vessel shall be subject to a fine not exceeding two hundred dollars.

7. The term "Bank fishery" in this chapter shall be construed to mean a fishery prosecuted at a distance of at least forty miles from the coast of this Colony.

8. No person shall wilfully remove, destroy or injure any lawful net or seine, the property of another, set or floating on or near the coast of this Colony or its dependencies, or any of the bays, harbors, or other places therein, or remove, let loose, or take any fish from such seine or net.

9. No person shall, between the tenth day of May and the twentieth day of October in any year, haul catch or take herrings or other bait for exportation within one mile measured by the shore across or the water of any settlement situate between Cape Chapeau Rouge and Point Enragee, near Cape Raye, under a penalty of two hundred dollars; and any such person so hauling, catching or taking within the said limits may be examined on oath by a Justice, Officer of Customs, or person commissioned for the purpose, as to whether the herrings or other bait are intended for exportation or otherwise, and, on refusal to answer, or answering untruly, such person shall, on conviction, be subject to a penalty not exceeding two hundred dollars.

10. No salmon shall be taken before the first day of May or after the tenth day of September in any year: Provided that if the time limited in this section shall be found to operate injuriously in any part of this Colony, the Governor in Council may appoint any other time or times, and such time or times shall be as binding upon all persons as if specially mentioned herein.

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11. No person shall buy or sell, or have in his possession, salmon, knowing the same to have been taken contrary to the provisions of this chapter; and every salmon so taken, bought or sold, shall be declared forfeited to the complainant by any Justice.

12. No person shall, at any time, haul, catch or take squids within, or by means of any seine, bunt, or other such contrivances.

13. No person shall, between the hours of twelve o'clock on Saturday night and twelve o'clock on Sunday night, take or catch, in any manner whatever, or by any contrivance whatsoever, any herring, caplin, squid, or any other bait fish, or set or put out any contrivances whatsoever, for the purpose of taking or catching herring, caplin, squid, or other bait fish.

14. It shall not be lawful for any person to manufacture into manure or into any article to be used as manure, either by machinery or by artificial chemical process, or by the use of both, any caplin, herring, squid, or other fish used as bait in the prosecution of the fisheries of this Colony and its dependencies. Every person who shall violate the provisions of this section shall be subject to a penalty of five hundred dollars for each offence.

15. It shall not be lawful for any person to throw overboard or deposit upon the fishing grounds or ledges, on or near the coasts of this Colony and its dependencies, any heads, entrails, bones or offal of the cod-fish. Every person who shall violate the provisions of this section shall be subject to a penalty not exceeding two hundred dollars, or, in default of payment thereof, to imprisonment not exceeding sixty days for each offence.

16. No person shall, upon the coasts of this Colony or its dependencies, use, for the purpose of taking codfish, any trap, the walls or sides of which consisted at its original construction of meshes less than four inches, and no netting for alterations or repairs of cod-traps shall be less than four inches.

17. No cod-trap shall be set on any of the fishing grounds of this Colony or its dependencies at a less distance than eighty fathoms from the nearest point of any cod-trap previously set, nor at a less distance than fifty fathoms from any cod net previously set: Provided that, if a cod-trap be set out on any of the fishing grounds aforesaid, and subsequently a second trap be set at a greater distance than eighty fathoms therefrom, it shall be lawful for the owner of the third trap to set the same at a distance of at least eighty fathoms of the first trap set out.

18. No cod-net shall be set on any of the fishing grounds of this Colony or its dependencies at a less distance than fifty fathoms from the nearest point of any cod-trap or cod-net previously set.

19. When any person shall have set a cod-trap, cod-net or bultow, and the same shall become damaged to an extent rendering it necessary that it be taken up for the purpose of repairs, he shall have the right to re-set his cod-trap, cod-net, or bultow in the place from whence it has been taken up for a period of one week from the time when it was so taken up.

20. No net shall be moored or set in any harbor, cove, creek or estuary, or on or near any part of the coast of this Colony or its dependencies, for the purpose of taking salmon, nearer to any other net moored or set for a like purpose than one hundred yards for a single net and three hundred yards for a double net or fleet of nets.

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21. All forfeitures and penalties imposed by this chapter shall be recovered with costs in a summary manner before any Justice, for which purpose such Justice may summon or arrest the offender, and compel witnesses, by summons or warrant, to appear before him; and upon conviction of the offender, such Justice shall (except under sections fourteen, fifteen and sixteen) cause all seines, nets and other contrivances illegally used to be sold by public auction; and, in default of the payment of any penalty imposed and costs, such Justice shall issue his warrant and cause such offender to be arrested and imprisoned for any period not exceeding twenty days.

22. The Governor in Council may appoint the Collector of Revenue for Labrador, or other person, to be Superintendent of the Fisheries on the coast of this Colony and its dependencies, and may also appoint Fishery Wardens, and prescribe their duties for the purposes of this chapter. The compensation for the services of such officers to be provided by the Legislature.

23. After two years from the ninth day of May, 1888, it shall be unlawful for any person to use any cod-trap for the purpose of catching or taking any codfish on the coast of this Colony or its dependencies.

24. Any person who shall violate the provisions of the next preceding section of this chapter shall be subject to a penalty not exceeding four hundred dollars, to be recovered in a summary manner before a stipendiary Magistrate or Justice of the Peace, and, in default of payment of such penalty, such offender shall be subject to imprisonment for a term not exceeding six months.

25. Any person who shall violate any of the provisions of this chapter, for the violation of which no penalty is named, shall be subject to a penalty not exceeding fifty dollars; and all nets, and other contrivances used contrary to the provisions of this chapter (except those referred to in sections sixteen, seventeen and eighteen) shall be forfeited, and may be seized by any Justice Sub-collector of Customs, Preventive Officer, Fishery Warden or Constable, on view or by virtue of a warrant issued by such Justice upon complaint made on oath, and the same may be detained until the trial of the offender, and, upon conviction, the same may be declared forfeited and ordered to be sold by public auction.

26. No proceeding or conviction by any Justice of the Peace or other officer under this chapter shall be quashed or set aside for any informality, if the same be substantially in accordance with the intent and meaning of this chapter.

27. If any person shall feel himself aggrieved by any order or judgment of a Justice under the first, third, fourth, ninth, fourteenth and twenty-fourth sections of this chapter, he shall have liberty to appeal to the Supreme Court in St. John's or on circuit, upon giving sufficient security for the due performance of such order or judgment, if confirmed, and for the payment of all costs, and to prosecute the said appeal.

28. Nothing in this chapter shall affect the rights and privileges granted by treaty to the subjects of any state or power in amity with Her Majesty.

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CONSOLIDATED STATUTES, 1892, CHAPTER 129.[a]

OF THE EXPORTATION, SALE, &C. OF BAIT FISHES.

1. No person shall—

(1) Export, or cause or procure to be exported, or assist in the exportation of; or

(2) Haul, catch, take, or have in his possession, for the purpose of exportation; or

(3) Purchase or receive in trade or barter, for the purpose of exportation; or

(4) Take, ship, or put, or haul on board, or assist in taking, shipping, putting, or hauling on board of any ship or vessel for any purpose whatever; or

(5) Carry or convey on board of any ship or vessel for any purpose whatever,

any herring, caplin, squid, or other bait fishes, from, on, or near any parts of this colony or its dependencies, or from or in any of the bays, harbors, or other places therein, without a license in writing, to be granted and issued as hereinafter provided.

2. Licenses may be granted for any of the following purposes, viz:

(*a*) To export bait fishes to a foreign country for bait purposes.

(*b*) To export bait fishes to a foreign country for food or consumption.

(*c*) To export bait fishes for use for bait purposes in prosecuting deep sea fisheries.

(*d*) To haul, catch, or take bait fishes for exportation.

(*e*) To purchase bait fishes for exportation for food or consumption.

(*f*) To take, ship, or put on board a ship or vessel, or to carry or convey on board a ship or vessel, bait fishes for exportation for food or consumption.

(*g*) To purchase bait fishes for exportation for bait purposes.

(*h*) To take, ship, or put on board a ship or vessel, or to carry or convey on board a ship or vessel, bait fishes for exportation for bait purposes.

(*i*) To take, ship, or put on board a ship or vessel, or to carry or convey on board a ship or vessel coastwise, to be discharged or landed or transshipped to some other ship or vessel within some port in this Colony.

3. No such licenses shall be issued except under the authority of the Governor in Council, and countersigned by the Colonial Secretary.

4. The Governor in Council may, from time to time, by proclamation, suspend or limit the operation of this *chapter*, [act] and the issue of licenses thereunder, in relation to any district or part of this colony, or the coasts thereof, and for such period and in relation to sale or exportation to such places or for such purposes and in such quantities as shall appear expedient, and as shall be declared and defined in the proclamation.

5. No license under this *chapter* [act] shall be granted to any person unless he shall have first made an affidavit before a Sub-collector

[a] This chapter is substantially the same as the act of June 1, 1889, (52 Vict., cap. 6) entitled "An act to amend and consolidate the laws relating to the exportation and sale of bait fishes." The words used in place of others appearing in the act of 1889 are printed in italics, and the words of the act of 1889 omitted are inserted in brackets.

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or Preventive Officer of Customs, or a stipendiary Magistrate, setting forth the following particulars, viz.: the name of the person to whom the license is to be granted; the name of the vessel on board of which it is intended to convey or export bait fishes; the purpose for which such bait fishes are intended to be conveyed or exported, whether for food or consumption, or for bait purposes; the country to which it is intended to export the same, or the place where the fishery is to be prosecuted for which such bait fishes are to be used.

6. Applications for licenses under this *chapter* [act] shall be made to a stipendiary Magistrate or a Customs' officer, who shall require the applicant in each case to make before him an affidavit stating the facts and particulars, as required under section five to be set forth in the license; and it shall be duty of the said stipendiary Magistrate or Customs' officer to report to the Governor in Council any refusal on the part of the applicant to make such affidavit, or any bona fide doubt on the part of such stipendiary Magistrate or Customs' officer of the truth of any of the statements set forth in such affidavit, or of a belief on his part that such license is applied for for the purpose of evading or defeating, or assisting in evading or defeating, the provisions of this *chapter* [act]. In such case it shall be the duty of such stipendiary Magistrate or other officer to withhold such license and await further instructions.

7. In every case in which a license is granted under this *chapter*, [act] the person to whom the same is granted shall also give bond to the Receiver General of this colony, with two sufficient securities in the sum of not less than one thousand dollars or more than two thousand dollars each, containing the condition that the terms of the license shall in all respects be complied with; and in the case of a license to export to a foreign country; that satisfactory proof of the landing of the cargo in such foreign country will be furnished within a stated period, and the forfeiture of the penal sum under such bond shall be in addition to any other penalty, forfeiture or punishment which may be imposed for the same offence under this *chapter*. [act]

8. The forms of the licenses, affidavits, and bonds, above provided, shall be prescribed by the Governor in Council.

9. Any person who shall violate any of the provisions of section one of this *chapter*, [act] or any of the sub-sections thereof; or

(1) Use, dispose of, or deal with any bait fishes otherwise than in accordance with the terms of the affidavits made upon application for a license, or with the terms of such license; or,

(2) Make any untrue statement in any affidavit upon application for a license under this *chapter* [act]; or,

(3) Obtain a license under this *chapter* [act] by means of any false statement or misrepresentation, or by the suppression or concealment of any material fact,

shall be liable for every first offence to a penalty not exceeding one thousand dollars or imprisonment for a period not exceeding twelve months.

Any person convicted of a second or subsequent offence under this *chapter* [act] shall, on conviction, be subject to imprisonment with hard labor for a period of not less than twelve months.

10. In addition to the punishment prescribed by the foregoing section, the convicting Magistrate may order the confiscation and sale

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of the herring, caplin, squid or other bait fishes which have been sold, purchased, hauled, taken, conveyed or exported in violation of the provisions of this *chapter* [act], or the terms of any license thereunder, or of the boat or vessel on board of which such bait fishes shall be found to have been unlawfully shipped, conveyed or exported, and the forfeiture of any license held by the offender.

11. Any person who shall sell any herring, caplin, squid or other bait fishes for the purpose of shipping or putting on board of any ship or vessel, or for the purpose of exportation to any person not holding or producing a license under this *chapter* [act], shall be liable to a fine not exceeding five hundred dollars, or to imprisonment not exceeding three months.

12. In any prosecution under the next preceding section, the onus of proof that the bait fishes were not intended for shipment or for exportation shall rest upon the party accused: Provided there be proof of a sale under such circumstances as shall be consistent with a reasonable presumption that shipment or exportation was intended.

13. The Governor in Council may, from time to time, appoint special commissioners for the purpose of enforcing the provisions of this *chapter* [act].

14. Any such commissioner, or any Justice of the Peace, Sub-collector, Preventive officer, fishery warden or constable may board and examine and search any boat or vessel suspected of having on board, or of conveying or exporting bait fishes contrary to the provisions of this *chapter* [act], or of any license granted thereunder; and in case any such commissioner, Justice of the Peace, Sub-collector, Preventive officer, fishery warden, constable, or the crew of any vessel employed by the Government, shall make a signal by hoisting the International signal B. M. I., meaning "Heave to, I will send a boat," and firing a gun, or by dipping at the main peak three times the flag with the badge of the colony, as prescribed by the Colonial regulations, it shall be the duty of the owner, master or person managing or controlling such vessel to heave to until such commissioner, Justice, Sub-collector, fishery warden or constable shall have boarded and examined such last-named vessel; and in case of such owner, master or person managing or controlling such last-named vessel omitting to heave her to, or obstructing or omitting to afford facilities for such commissioner, Justice, Sub-collector, Preventive officer, fishery warden or constable in boarding and examining such vessel, he shall be subject to a penalty not exceeding five hundred dollars or to imprisonment for a term not exceeding three months. The master of any vessel who shall refuse or unreasonably delay in obeying such signal may be arrested and brought before a stipendiary Magistrate, and his vessel may be seized and held by any such commissioner, Justice, Sub-collector, Preventive officer, fishery warden or constable until an adjudication shall have taken place, upon a complaint under this section.

15. Any person found hauling, catching, taking, purchasing, selling, shipping or conveying any bait fishes, or any person having any such fishes in his possession, or the master, owner or crew of any boat or vessel on board of which any bait fishes may be found, may be examined on oath by a Justice of the Peace, Sub-collector or Preventive officer, fishery warden or commissioner, appointed under this *chapter* [act], as to the quantity and kind of bait fishes in his

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possession or on board of such boat or vessel, the purpose for which such bait fishes are intended to be used or as to the place to which *such bait fishes* [the same] are intended to be conveyed or exported, and upon his refusing to answer, or answering untruly, or failing to produce a license under this *chapter* [act], or having such license, being found to have violated or failed to comply with the provisions thereof, such Justice, Sub-collector, Preventive officer, fishery warden or commissioner may seize the boat or vessel on board of which such bait fishes shall have been hauled or caught, or put, kept, shipped, carried, conveyed or exported, or on board of which the same may have been found, her tackle, apparel, furniture and outfit, and the said bait fishes so found as aforesaid, and may hold the same until an adjudication shall have been had, upon a complaint in relation to such alleged offence.

16. In any such case as mentioned in the next preceding section, any officer therein authorized to seize any boat or vessel and any constable or peace officer then present, shall have power, by direction of any such officer authorized as aforesaid, and without any warrant or complaint upon oath, to arrest any person found committing or omitting to do any of the acts for or on account of which such boat or vessel may be seized, and to detain him in custody until an adjudication shall have taken place as before provided.

17. In any prosecution under this *chapter* [act], the fact of shipping, putting or having bait fishes on board of any boat or vessel, shall be prima facie evidence of the same having been so shipped, put, had or conveyed for the purpose of exportation and the refusal or failure to produce a license upon being called upon so to do, shall be prima facie evidence of such bait fishes having been shipped, put, conveyed or exported without a license; and any exportation, or intended exportation of bait fishes shall in the absence of proof to the contrary, be held to be an exportation or intention to export for bait purposes.

18. All offenders against the provisions of this *chapter* [act] may be prosecuted and convicted, and all fines, forfeitures, penalties, orders for confiscation, and other punishments imposed, recovered, and made in a summary manner before a stipendiary Magistrate. In the event of the prosecution of an offender who would not be liable to or ordered to pay a fine, then the reasonable expenses of the prosecutor, including a fair amount for his time and labor expended in and about such prosecution shall, on the certificate of the Magistrate who heard the case, be paid to the prosecutor by the Receiver General.

19. If any person convicted under this *chapter* [act] shall feel himself aggrieved by such conviction, he may appeal therefrom to the then next sitting of Her Majesty's Supreme Court holden in or nearest to the place where such conviction shall have been had: Provided notice of such appeal and of the cause and matter thereof be given to the convicting Magistrate, in writing, within seven days next after such conviction, and the party desiring to appeal shall also, within fourteen days after such notice, give and enter into recognizance, with two approved sureties, before the convicting Magistrate, conditioned for the appearance of the person convicted at such next sitting of the Supreme Court on the first day of such sitting, for the prosecution of the appeal with effect and without delay, to abide the judgment of the Court thereon and for the delivery and surrender of

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any vessel or other property ordered to be confiscated, and to pay such costs as the Court shall award. Any person who shall be convicted and imprisoned by any such Magistrate for an offence against this *chapter* [act], and who shall have given such notice of appeal, and shall have entered into such recognizance with approved sureties, may be discharged from prison, in which case the recognizance shall be further conditioned for the surrender of the convicted party, on the first day of such next sitting of the Supreme Court, to the sheriff of the district in which such appeal may be heard.

20. No proceeding or conviction by, or order of any Justice or other officer under this *chapter* [act], shall be quashed or set aside for any informality, provided the same shall be substantially in accordance with the intent and meaning of this *chapter* [act].

21. In this *chapter* [act] the word "vessel" shall include any boat or ship registered or not registered, jack, skiff, punt or launch, whether propelled by sails, oars or steam.

22. Nothing in this *chapter* [act] shall affect the rights and privileges granted by treaty to the subjects of any state in amity with Her Majesty.

23. For the purposes of this *chapter* [act] all stipendiary Magistrates shall be deemed to be stipendiary Magistrates for the colony, and may exercise the jurisdiction given by this *chapter* [act] in any part of the colony. All officers engaged in carrying out this *chapter* [act], and the masters and crews of all vessels engaged in the said service, may severally be sworn as special constables, and shall, while engaged in carrying out this *chapter* [act], have all the powers, authority and protection of police constables.

[*24. The Act passed in the Fiftieth year of the Reign of Her present Majesty, Chapter One, entitled, "An Act to regulate the Exportation and Sale of Herring, Caplin, Squid, and other Bait Fishes," and the Act passed in the Fifty-first year of the said Reign, Chapter Nine, entitled "An Act to amend an Act passed in the Fiftieth year of the Reign of Her present Majesty, entitled 'An Act to regulate the Exportation and Sale of Herring, Caplin, Squid, and other Bait Fishes,'" are hereby repealed: Provided that this repeal shall not be held to affect any penalty, forfeiture, or liability incurred under the said Act, or any proceedings for enforcing the same, had, done, completed, or pending at the time of this repeal, or any office, appointment, or authority or duty created, conferred, or imposed, or any right or privilege acquired or existing, or any licence granted under the authority of the said Acts; and provided further, that every person holding a licence under either of the said Acts shall, as soon as practicable after the passing of this Act, surrender the same to the nearest Magistrate or Customs officer authorized to issue licences under this Act, who shall thereupon grant in lieu thereof a licence under the provisions of this Act for such purpose as the same shall be required; and any licence issued under the authority of said Acts, not so surrendered as soon as practicable, or within a reasonable period, shall be held to have been terminated and to be of no further effect.*

25. This Act shall come into force at such date as shall be appointed by the Governor by his Proclamation.]

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ACT OF MAY 24, 1893, RESPECTING FOREIGN FISHING VESSELS.

(56 Vict., cap. 6.)

AN ACT Respecting Foreign Fishing-vessels.

Be it enacted by the Governor, the Legislative Council and House of Assembly, in Legislative Session convened, as follows:—

1. The Governor in Council may authorize the issuing of licenses to foreign fishing-vessels, enabling them to enter any port on the coasts of this island for the following purposes: The purchase of bait, ice, seines, lines, and all other supplies and outfits for the fishery, and for the shipping of crews.

2. Any Justice of the Peace, sub-collector, preventive officer, fishery warden, or constable may go on board any foreign fishing-vessel within any port on the coasts of this island, or hovering in British waters within three marine miles of any of the coasts, bays, creeks, or harbours in this island, and may stay on board such vessel so long as she remains within such port or distance.

3. Any one of the officers or persons hereinbefore mentioned may bring any foreign fishing-vessel, being within any port on the coasts of this island, or hovering in British waters within three marine miles of any of the coasts, bays, creeks, or harbours of this island, into port, may search her cargo and may examine the master upon oath touching the cargo and voyage; and the master or person in command shall answer truly such questions as shall be put to him, under a penalty not exceeding 500 dollars. And if such foreign fishing-vessel has on board any herring, caplin, squid, or other bait fishes, ice, lines, seines, or other outfits or supplies for the fishery, purchased within any port on the coasts of this island, or within the distance of three marine miles from any of the coasts, bays, creeks, or harbours of this island, or if the master of the said vessel shall have engaged or attempted to engage any person to form part of the crew of the said vessel in any port, or on any part of the coasts of this island, without a license therefor in writing first granted to any such vessel under the provisions of this Act, or has entered such waters for any purpose not permitted by Treaty, Convention, or Act of the Legislature for the time being in force, such vessel and the tackle, rigging, apparel, furniture, stores and cargo thereof shall be forfeited.

4. All goods and vessels, and the tackle, rigging, apparel, furniture, stores and cargo thereof, liable to forfeiture under this Act may be seized and secured by any officer or person mentioned in the second section of this Act, and every person opposing any officer or person in the execution of his duty under this Act, or aiding or abetting any other person in such opposition, shall be deemed guilty of a misdemeanour and liable to a fine of 500 dollars.

5. In any prosecution under this Act, the presence on board of any foreign fishing-vessel, in any port of this island, or within British waters aforesaid, of any caplin, squid, or other bait fishes, of ice, lines, seines, or other outfits or supplies for the fishery shall be *primâ facie* evidence of the purchase of the said bait fishes and outfits within such port or waters, and the refusal or failure to produce a license upon being called upon so to do shall be *primâ facie* evidence of the purchase of bait, ice, lines, seines, or other supplies or outfits for the fishery without a license.

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6. All offenders against the provisions of this Act may be prosecuted and convicted, and all fines, forfeitures, penalties, and other punishments imposed, recovered, and made, in a summary manner, before a Stipendiary Magistrate. For the purposes of this Act all Stipendiary Magistrates shall be deemed to be Stipendiary Magistrates for the Colony, and may exercise the jurisdiction given by this Act in any part of the Colony.

7. If any person convicted under this Act shall feel himself aggrieved by such conviction, he may appeal therefrom to the then next sitting of Her Majesty's Supreme Court, holden in or nearest the place where such conviction shall have been had, or in St. John's: Provided that notice of such appeal and of the cause and matter thereof be given to the convicting Magistrate in writing, within seven days next after such conviction, and the party desiring to appeal shall also, within fourteen days after such notice, give and enter into recognizance with two approved sureties before the convicting Magistrates conditioned for the appearance of the person convicted at such next sitting of the Supreme Court, on the first day of such sitting, for the prosecution of the appeal with effect and without delay, to abide the judgment of the Court thereon, and for the delivery and surrender of any vessel or other property ordered to be confiscated, and to pay such costs as the Court may award.

8. No proceeding or conviction by, nor order of, any Magistrate or other officer under this Act shall be quashed or set aside for any informality, provided the same shall be substantially in accordance with the intent and meaning of this Act.

9. Nothing in this Act shall affect the rights and privileges granted by Treaty to the subjects of any State in amity with Her Majesty.

10. Any foreign fishing-vessel may enter any port of entry of this island for the purpose of applying for a license under the provisions of this Act. Applications for licences under this Act shall be made to a Customs officer at a port of entry in this Colony, who is hereby authorized to issue the same. The fee for such license shall be 1 dol. 50 c. per registered ton, to be paid to the Customs officer issuing said license. The form of such licenses and the terms and conditions under which the same shall be granted shall be determined by the Governor in Council.

11. In this Act the word "vessel" shall include any boat or ship registered or not registered, jack, skiff, punt, or launch, whether propelled by sails, oars, or steam.

ACT OF MAY 24, 1898, RESPECTING THE DEPARTMENT OF FISHERIES.

(56 Vict., cap. 8.)

AN ACT Respecting the Department of Fisheries.

Be it enacted by the Governor, the Legislative Council and House of Assembly, in Legislative Session convened, as follows:—

1. There shall be a Department which shall be called "The Department of Fisheries", over which the officer, called the "Commissioner of Fisheries", for the time being, appointed by the Governor, shall preside. The Commissioner shall have the management and direction of the said department and shall hold office during pleasure.

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2. The Commissioner of Fisheries shall administer all laws relating to sea, coast and inland fisheries, the management, regulation and protection thereof, and all matters and things relating thereto and assigned by the Governor in Council to him or to the Department of Fisheries.

3. The Governor in Council may appoint a Board to be called "The Fisheries' Board." The Commissioner of Fisheries shall be the President of the said Board, and he and four members present at any meeting shall form a quorum, and he shall make and submit to the Governor in Council an annual report on all matters under the control of the said Commissioner or of the said Board, to be laid before the Legislature at each Session thereof.

4. There shall be an Executive Committee of the Board consisting of seven members, of whom the President shall be ex officio one, and the remaining six shall be elected by the members of the Board at each annual meeting to be held in St. John's in the month of January in each year.

5. The powers, duties and functions of the said Board shall be, to make inquiries and researches upon and in relation to all matters pertaining to the preservation, maintenance, improvement, and development of the fisheries, and the trade, commerce and interests of the Colony, so far as the same are connected with or relate to the fisheries and fishery questions; to devise, organize and maintain such methods of collecting, preserving, and diffusing such knowledge and information as they may consider best adapted to the attainment of such objects.

6. The Governor in Council may, upon the recommendation of the Fishery Board, from time to time, as occasion may require, appoint, employ and dismiss such officers and servants as may be necessary for carrying out the work of the said Board and the said Department.

7. The Board shall keep full and true records of their proceedings, which shall be subject to confirmation by the Governor in Council.

8. The Fisheries' Board shall have power to make and prescribe rules and regulations in relation to the prosecution of the several fisheries of the Colony; to the fixing of close seasons; to the methods, appliances and contrivances to be used and adopted in and for the taking of fish; and the times, seasons and manner for and in which the same or any of them may be used or adopted; which rules and regulations may apply to such districts or places and for such periods and under such limitations as may therein be stated or defined; and to fix and impose penalties for the violation or non-performance of such rules and regulations and the mode of prosecution therefor; and from time to time to alter or repeal the same.

9. Any such new rules and regulations, and any alterations or amendments in existing rules and regulations which may be contemplated to be made, shall be published in not less than three numbers of the Royal Gazette and not less than two other newspapers in this Colony, not later than the first day of January next preceding the Session of the Legislature in which they may be proposed to be submitted for confirmation, together with a notice to the effect that such new rules and regulations and alterations or amendments thereof are intended to be proposed for confirmation; and the said rules and regulations and all alterations and amendments thereof, shall be annually laid on the table of both branches of the Legislature within ten days after the commencement of the Session, and shall

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be confirmed, disallowed, or amended, in whole or in part, by resolution of both branches of the Legislature, within one month after being so laid on the table; and upon publication in the Royal Gazette, certified by the Colonial Secretary, shall become law, and have the same force and effect as if herein enacted, notwithstanding that the same extend or alter any provisions of Acts of the Legislature relating to the modes and times of fishing, the methods, appliances and contrivances used for the taking of fish, or to close seasons, or otherwise to the fisheries, but any amendments may be adopted by resolutions of both branches of the Legislature, and come into force in the same manner as above provided.

10. Nothing in this Act or in any rules and regulations to be made hereunder shall be construed to affect the rights and privileges granted by treaty to the subjects of any State or Power, in amity with Her Majesty.

11. The Act passed in the Fifty-second year of the Reign of Her present Majesty, Chapter seven, entitled "An Act to provide for the Formation of a Fisheries Commission and for other purposes", and the Act passed in the Fifty-fourth year of the Reign of Her present Majesty, Chapter fourteen, entitled "An Act to amend an Act passed in the Fifty-second year of the Reign of Her present Majesty, entitled 'An Act to provide for the Formation of a Fisheries' Commission, and for other purposes,'" are hereby repealed: Provided such repeal shall not affect any acts done under or by virtue of the said Acts or either of them; and provided also that the rules and regulations made by the Fisheries' Commission, and amended and adopted by resolution of both branches of the Legislature in the present Session thereof, under the provisions of the said Acts, shall, notwithstanding such repeal, continue in force and have effect as law until rules and regulations under the provisions of this Act shall have been laid before the Legislature at its next Session.

12. The appointments made under the said Act, 52nd Victoria, Cap. 7, shall continue as if they had been made under this Act, and the members of the said Fishery Commission are hereby declared to be members of the Fisheries' Board under this Act. Provided that the Governor in Council may, if deemed expedient, remove or supersede any member of the said Board, and fill any vacancies caused by death or by such removal or supersession.

ACT OF MARCH 3, 1898.

(61 Vict., cap. 3.)

AN ACT Respecting the Department of Marine and Fisheries.

Be it enacted by the Governor, the Legislative Council and House of Assembly, in Legislative Session convened, as follows:—

1. There shall be a department which shall be called "The Department of Marine and Fisheries", over which the Minister of Marine and Fisheries appointed by the Governor in Council, by Commission under the Great Seal, shall preside; and the Minister shall have the management and direction of the said department, and shall hold office during pleasure.

2. The Governor in Council may appoint an officer who shall be called "The Superintendent of Fisheries", and who shall be deputy

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head of the department of Marine and Fisheries; and the Governor in Council may also appoint such other officers as are necessary for the proper conduct of the business of the said department, all of whom shall hold office during pleasure.

3. The duties, powers and functions of the department of Marine and Fisheries shall extend and apply to the following subjects and boards, and other public bodies, officers and other persons, and services and properties of the Crown, of which the said department shall have the control, regulation, management and supervision, that is to say:—

(1) Pilots and pilotage and decayed pilot funds.

(2) Beacons, buoys, lights and light-houses, and their maintenance.

(3) Signals and signal-stations, steamers and vessels belonging to the Government of the Colony.

(4) Harbours, ports and harbour-masters; piers, wharves, and St. John's Dry Dock.

(5) Classification of vessels, and examination and granting certificates of masters and mates and others in the merchant service.

(6) Shipping masters and shipping officers; care of distressed seamen.

(7) Ship-building and inspection of steamers and vessels.

(8) Wreck commissioners, and enquiries into causes of shipwrecks, and generally such matters as refer to the marine and navigation of the Colony and its dependencies.

4. The Department of Marine and Fisheries shall administer all laws relating to the subject of sea, coast, and inland fisheries, and the management, regulation and protection thereof, and all matters and things relating thereto, or assigned by the Governor in Council to the said department.

* * * * * * *

9. The Governor in Council may, from time to time, make regulations for the better management and regulation of the sea, coast, and inland fisheries, to prevent or remedy the obstruction and pollution of streams, to regulate and prevent fishing, to prohibit the destruction of fish, and to forbid fishing except under authority of leases or licenses; which regulations shall have the same force and effect as if herein enacted, and may fix such modes, times or places as are deemed by the Governor in Council adapted to different localities, or otherwise expedient.

(2) Such regulations shall take effect from the date therein prescribed and after publication thereof in the Royal Gazette.

(3) Every offence against any regulation made under this Act may be stated as in violation of this Act.

10. Nothing in this Act, or in any rules and regulations to be made hereunder, shall be construed to affect the rights and privileges granted by treaty to the subjects of any state or power in amity with Her Majesty.

* * * * * * *

14. The Governor in Council may assign any new or other duty or power to the Minister of Marine and Fisheries, and may also assign any of the duties or powers herein before enumerated to the Minister of any other department.

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17. This Act shall come into force on the first day of July, A. D. 1898.

(a) Save and except the provisions of sections 9, 11 and 12, which shall come into force immediately upon the passing of this Act.

18. The Act 56th Vic., cap. 8, is hereby repealed.

ACT OF MARCH 30, 1898.

(61 Vict., cap. 13.)

AN ACT Respecting the Customs.

Be it enacted by the Governor, the Legislative Council, and the House of Assembly, in Legislative Session convened, as follows:—

1. This Act may be cited as "The Customs' Act, 1898."

2. In this Act, or in any other laws relating to the Customs, unless the context otherwise requires—

(a) The expression "port" means a place where vessels may discharge or load cargo.

(b) The expression "Collector" means the Collector of Customs at the port intended in the sentence, or any person lawfully deputed, appointed or authorized to do the duty of Collector thereat.

(c) The expression "officer" means an officer of the Customs.

(d) The expression "vessel" means any ship, vessel or boat of any kind whatsoever, whether propelled by steam or otherwise.

(e) The expression "master" means the person having or taking charge of any vessel.

(f) The expression "owner," "importer," or "exporter" includes persons lawfully acting on their behalf.

(g) The expression "goods" means goods, wares and merchandize, or moveable effects of any kind.

(h) The expression "warehouse" means any place, whether house shed, yard, dock, pond, or other place in which goods imported may be lodged, kept and secured without payment of duty.

(i) The expression "Customs warehouse" includes sufferance ware house, bonding warehouse and examining warehouse.

(j) The expression "oath" includes declaration and affirmation.

(k) The use of the expression "seized and forfeited," "liable to forfeiture," or "subject to forfeiture," or any other expression which might of itself imply that some act subsequent to the commission of the offence is necessary to work the forfeiture, shall not be construed as rendering any such subsequent act necessary, but the forfeiture shall accrue at the time of and by the commission of the offence in respect of which the penalty of forfeiture is imposed.

(l) The expression "value" in respect to any penalty or forfeiture imposed by this Act, and based upon the value of any goods or articles, means the duty-paid value of such goods or articles at the time of the commission of the offence by which such penalty or forfeiture is incurred.

(m) The expression "Court" means the Supreme Court of Newfoundland.

All the expressions and provisions of this Act, or of any such law as aforesaid, shall receive such fair and liberal construction and inter-

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pretation as will best insure the protection of the revenue and the attainment of the purpose for which this Act or such law was made, according to its true intent, meaning and spirit.

3. The Governor in Council may, by regulation from time to time, appoint the ports and places of entry for the purposes of this Act, and may in like manner increase or diminish the number or alter the position or limits thereof.

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REPORT AND ENTRY INWARDS.

18. No goods shall be unladen from any vessel arriving at any port or place in this Colony from any place out of this Colony, or from any vessels having dutiable goods on board brought coastwise, nor shall bulk be broken within three leagues of the coast, until due entry has been made of such goods and warrant granted for the unlading of the same; and no goods shall be so unladen, unless for the purpose of lightening the vessel in crossing over or getting clear from a shoal, rock, bar, or sand-bank, except between six o'clock in the morning and six o'clock in the evening, and on some day not being a Sunday or statutory holiday, and at some hour and place at which an officer of the Customs is appointed to attend the unlading of goods, or at some place for which a sufferance has been granted by the collector or other proper officer for the unlading of such goods; and if, after the arrival of the vessel within three leagues of the coast, any alteration is made in the stowage of the cargo so as to facilitate the unlawful unlading of any part thereof, or if any part thereof is fraudulently staved, destroyed, or thrown overboard, or any package is opened, it shall be deemed a breaking of bulk; and all goods unladen contrary to this Act shall be seized and forfeited; and if bulk is broken contrary to this Act the master shall forfeit four hundred dollars, and the vessel may be detained until the said sum is paid, or satisfactory security is given for the payment thereof; and unless payment is made or security is given within thirty days, such vessel may, at the expiration thereof, be sold to pay the said sum.

* * * * * * *

21. In the case of every vessel bound for any seaport or place in this Colony from any port out of this Colony, the collector or proper officer of such port may cause such vessel to be boarded by an officer of Customs detailed by him for such service at any place within three marine miles of the anchorage ground, and such officer may demand from the master or purser of such vessel a correct copy of the report inwards intended by such master or purser to be presented at the Custom House on arrival; and such boarding officer may remain on board the vessel until she anchors, and the copy of the report so received by him shall be deposited by him at the Custom House as the vessel's report inwards for comparison with that to be presented by the master or purser in person.

22. The master of every vessel coming from any port or place out of this Colony, or coastwise, and entering any port in this Colony, whether laden or in ballast, shall go without delay, when such vessel is anchored or moored, to the Custom House for the port or place of entry where he arrives, and there make a report in writing to the

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Collector or other proper officer, of the arrival and voyage of such vessel, stating her name, country and tonnage, the port of registry, the name of the master, the country of the owners, the number and names of the passengers, if any, the number of the crew, and whether the vessel is laden or in ballast, and if laden, the marks and numbers of every package and parcel of goods on board, and of the sorts of goods and the different kinds of each sort contained therein, and where the same was laden, and the particulars of any goods stowed loose, and where and to whom consigned, and where any, and what goods, if any, have been laden or unladen, or bulk has been broken during the voyage, what part of the cargo and the number and names of the passengers which are intended to be landed at that port, and what and whom at any other port in this Colony, and what part of the cargo, if any, is intended to be exported in the same vessel, and what surplus stores remain on board, as far as any of such particulars are or can be known to him.

23. The master shall, at the time of making his report, if required by the officer of Customs, produce to him the certificate of registry of his vessel, the bills of lading of the cargo, or true copies thereof, and shall make and subscribe an affidavit referring to his report and declaring that all the statements made in the report are true; and shall further answer all such questions concerning the vessel and cargo, and the crew, and the voyage, as are demanded of him by such officer, and shall, if required, make the substance of any such answer part of his report.

24. If any goods are unladen from any vessel before such report is made, or if the master fails to make such report, or makes an untrue report, or does not truly answer the questions demanded of him, as provided in the next preceding section, he shall incur a penalty of four hundred dollars, and the vessel may be detained until such penalty is paid; and unless payment is made within thirty days, such vessel may, after the expiration of such delay, be sold to pay such penalty and any expenses incurred in detaining, keeping and selling such vessel.

25. All goods not reported found on board of any vessel or landed, shall be seized and forfeited, unless it appears that there was no fraudulent intention, in which case the master shall be allowed to amend his report; but the necessary discharging of any goods for the purpose of lightening the vessel, in order to pass any shoal or otherwise for the safety of such vessel, shall not be deemed an unlawful landing or breaking of bulk.

26. If the contents of any package intended for importation into another part, or for exportation, are unknown to the master, the proper officer may open and examine it, and cause it for that purpose to be landed if he sees fit; and if any prohibited goods are found therein all the goods in such package shall be seized and forfeited.

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ENTRY OUTWARDS.

96. Except as provided by section 112, the master of every vessel bound outwards from any port in this Colony to any port or place out of this Colony, or on any voyage to any place within or without

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the limits of this Colony, or coastwise, shall deliver to the collector or other proper officer a report in writing outwards under his hand, of the destination of such vessel, stating her name, country, and tonnage, the port of registry, the name of the master, the country of the owners and the number of the crew; and before any goods or ballast are taken on board such vessel the master shall show that all goods therein imported, except such as were reported for exportation in the same vessel have been duly entered and landed; except that the proper officer may issue a stiffening order that such goods or ballast as are specified therein may be laden before the former cargo is discharged; and before such vessel departs the master shall bring and deliver to the collector or other proper officer a content in writing under his hand, of the goods laden and the names of the respective shippers and consignees of the goods, with the marks and numbers of the packages or parcels of the same, and shall make and subscribe a declaration to the truth of such content as far as any of such particulars can be known to him.

97. The master of every vessel, whether in ballast or laden shall, before departure, come before the collector, or other proper officer, and answer all such questions concerning the vessel, and the cargo, if any, and the crew, and the voyage, as are demanded of him by such officer, and if required, shall make his answers or any of them part of the declaration made under his hand; and thereupon the collector or other proper officer, if such vessel is laden, shall make out and give to the master a certificate of the clearance of such vessel for her intended voyage with merchandize or a certificate of her clearance in ballast, as the case may be; and if there is merchandize on board, and the vessel is bound to any port in this Colony, such clearance shall state whether any and which of the goods are the produce of this Colony, and if the goods are such as are liable to duties, whether the duties thereon have been paid; and in such case the master shall hand the clearance to the collector at the next port in this Colony at which he arrives, immediately on his arrival.

98. If any vessel departs from any port or place in this Colony without a clearance, or if the master delivers a false content, or does not truly answer the questions demanded of him, or if any goods be laden on board any such vessel before the master shall show that all goods therein imported (except such as were reported for exportation in the same vessel) have been duly entered and landed, unless a stiffening order has been given, or if, having received a clearance, such vessel adds to her cargo, or performs any work without having mentioned in the report outwards the intention so to do, the master shall incur a penalty of four hundred dollars; and the vessel shall be detained in any port in this Colony until the said penalty is paid; and unless payment is made within twenty days, such vessel may, after the expiration of such delay, be sold to pay such penalty, and any expenses incurred in detaining, keeping and selling such vessel.

99. The Governor in Council may, by regulation, dispense with any of the requirements of the two sections next preceding which he deems it inexpedient to enforce, with regard to vessels engaged in the coasting trade.

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GOODS LANDED AT LABRADOR.

110. All goods landed at Labrador shall be subject to the duties imposed upon the like goods imported into any part of this Colony and to the same laws, rules and regulations as though they were on board the importing ship on arrival, before such landing; and unless the owners or their agents shall duly account for all such goods to any officer of the revenue appointed to collect duties at Labrador, and to his satisfaction, pass entries for the same, and pay the duties thereon, such goods shall be forfeited; and any such officer may, at any time between sunrise and sunset, enter into any building or place of any person, dealing in or having in his possession dutiable goods, and take an account thereof; and if such owner or agent shall refuse to open the doors, or shall in anywise obstruct such officer, he shall forfeit the sum of four hundred dollars; and such officer may, if he think fit at any time so to do take with him a writ of assistance, and proceed therewith by day or night in manner by law in that behalf directed in similar cases.

111. Every importer of any goods at Labrador shall, within two days after importation, make due entry of such goods and pay the duties thereon, and if required by the collector land the said goods; and in default of such entry and payment of duties the collector may seize and sell the said goods, or so much as may be necessary for the payment of all duties on such importation, paying over the surplus of the proceeds, after the payment of such duties and expenses of seizure and sale, to the proprietor of such goods or to any person authorized to receive the same.

112. Entry outwards of any vessel bound from the coasts of Labrador to any place out of this Colony, shall be made according to sections ninety-six and ninety-seven of this Act: Provided that should the master of any vessel by reason of the absence of the collector or by reason of his inability to reach the collector, be prevented from clearing his vessel in conformity with the provisions of the above-quoted sections of this Act, the owners, shippers or consignors of the cargo on board such vessel shall deliver to the collector at St. John's at the earliest opportunity, an entry, in the form required by section one hundred of this Act, of such parts of the cargo as have been shipped by them respectively, and in case of such persons neglecting or refusing to deliver such entry to the collector at St. John's, they shall incur a penalty of two hundred dollars.

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PROTECTION OF THE REVENUE.

118. If any vessel is found hovering in British waters, within one league of the coasts or shores of this Colony, any officer of Customs may go on board and enter into such vessel, and stay on board such vessel while she remains within the limits of this Colony or within one league thereof; and if any such vessel is bound elsewhere, and so continues hovering for the space of twenty-four hours after the master has been by such officer of Customs, required to depart, such officer may bring the vessel into port, and examine her cargo, and if any goods, the importation of which into this Colony is prohibited are on board, such vessel, with her apparel, rigging, tackle, furniture, stores

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and cargo, shall be seized and forfeited; and if the master or person in charge refuses to comply with the lawful directions of such officer, or does not truly answer such questions as are put to him, respecting such ship or vessel or her cargo, he shall incur a penalty of four hundred dollars.

119. The master of any vessel shall, if required, produce his manifest to such revenue officer, and also deliver to him a copy thereof, and such officer shall note on the original manifest, the date of production, and return the same to the master; and if any such master shall refuse to produce his manifest; or to deliver a copy thereof as aforesaid he shall forfeit the sum of two hundred dollars.

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121. If any vessel enters any place other than a port of entry, unless from stress of weather or other unavoidable cause, any dutiable goods on board thereof, except those of an innocent owner, shall be seized and forfeited, and the vessel, if of less value than eight hundred dollars, may be seized, and the master or person in charge thereof shall incur a penalty not exceeding four hundred dollars, and the vessel may be detained until such penalty is paid; and unless payment is made within thirty days, such vessel, may, after the expiration of such delay, be sold to pay such penalty, and any expenses incurred in making the seizure and in the safe keeping and sale of such vessel.

122. If any vessel worth more than eight hundred dollars, enters any place other than a port of entry, unless from stress of weather or other unavoidable cause, any dutiable goods on board thereof except those of an innocent owner, shall be seized and forfeited, and the vessel may be seized, and the master or person in charge thereof shall incur a penalty of eight hundred dollars; and the vessel may be detained until such penalty is paid; and unless payment is made within thirty days, such vessel may, after the expiration of such delay, be sold to pay such penalty, and any expenses incurred in making the seizure and in the safe keeping and sale of such vessel.

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POWERS AND DUTIES OF OFFICERS.

147. Every officer and person who is employed under the authority of any Act relating to the collection of the revenue, or under the direction of any officer of Customs, shall be deemed and taken to be duly employed for the prevention of smuggling and for the enforcement of this Act in every respect, whether such officer or person is or is not the holder of a writ of assistance; and in any suit or information, the averment that such person was so duly employed shall be prima facie proof thereof.

148. Every such officer or person as mentioned in the next preceding section, and every sheriff, justice of the peace, or person residing more than ten miles from the residence of any officer of Customs, and thereunto authorized by any collector of Customs or justice of the peace, may upon information, or upon reasonable grounds of suspicion, detain, open and examine any package suspected to contain prohibited property or smuggled goods, or goods respecting which there has been any violation of any of the requirements of this Act, and may go on board of and enter into any vessel or vehicle of any description whatsoever, and may stop and detain the same, whether

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arriving from places beyond or within the limits of this Colony, and may rummage and search all parts thereof for such goods; and if any such goods are found in any such vessel or vehicle, the officer or person so employed may seize and secure such vessel or vehicle, together with all the sails, rigging, tackle, apparel, horses, harness, and all other appurtenances which at the time of such seizure belonged to or are attached to such vessel or vehicle with all goods and other things laden therein or thereon, and the same shall be seized and forfeited.

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152. Officers of Customs may board any vessel at any time or place and stay on board until all the goods intended to be unladen have been delivered; and they shall have free access to every part of the vessel, with power to fasten down hatchways, the forecastle excepted, and to mark and secure any goods on board; and if any place, box, or chest is locked, and the keys are withheld, the officer may open the same.

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258. All general regulations made by the Governor in Council under this Act, shall have effect from and after the day on which the same are published in the Royal Gazette, or from and after such later day as is appointed for the purpose in such regulations, and during such time as is therein expressed, or if no time is expressed for that purpose, then until the same are revoked or altered.

ACT OF JULY 19, 1899.

(62 and 63 Vict., cap. 19.)

AN ACT Relating to Light Dues.

Be it enacted by the Governor, the Legislative Council and the House of Assembly, in Legislative Session convened, as follows:—

1. Upon every merchant vessel or ship entering any port or place within this colony, other than coasting, sealing or fishing vessels owned and registered in this colony, there shall be levied and paid once in every calendar year (but not oftener than once in three months) the following duty or rate per registered ton, that is to say:—At the rate of twenty-four cents per ton up to and including 500 tons, and twelve cents per ton additional on every ton over 500 up to and including 1,000 tons, and six cents per ton additional on every ton over 1,000 tons and up to and including 2,000 tons. On no ship or vessel shall a greater rate than two hundred and forty dollars be levied in any one calendar year or oftener than once in three months.

2. Any vessel arriving in the port of St. John's for coal, food or supplies, or for repairs, and not bringing cargo for delivery in this colony, and not taking from this colony any cargo which such vessel did not bring into the colony, shall pay only one-half the light dues provided by section one of this Act.

3. Upon vessels owned and registered in the colony, engaged in the Labrador, Bank and Coast fisheries, or in the local coasting trade, there shall not be levied or paid any rate or duty whatever under this

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Act while such vessels are not engaged otherwise than in the said fisheries or trade. Should any such vessel proceed on any other than a fishing voyage to any place outside this colony such vessel shall be liable to pay once in each calendar year (but not oftener than once in three months) the rate or duty of six cents per registered ton.

4. Sub-Collectors and Preventive Officers employed in the Customs' service of the country, and such other persons as the Minister of Finance and Customs may appoint, shall be entitled to demand, recover and receive the said rates and duties imposed by this Act, and the monies raised and levied under the provision hereof shall be paid to the Minister of Finance and Customs, and there shall be allowed to the persons so collecting, such commission, not exceeding five dollars per centum upon the amounts collected, as the Minister of Finance and Customs may direct.

5. On the non-payment by the master, or any person having charge of, or any owner of, any ship or vessel, of any rate or duty payable or incurred under this Act, such rate or duty shall and may be sued for and recovered in a summary manner, in the name of the Minister of Finance and Customs or other person authorized to receive the same, before a Stipendiary Magistrate or two Justices of the Peace within the district where the Customs' officer or other person so authorized may reside, together with all costs incurred, and shall be levied by warrant and distress of such Magistrate or Justice on the goods and chattels of the owner, or of the master or other person in charge of the respective ship or vessel, on account of which the said rate or duties shall respectively be payable.

6. Neither the Minister of Finance and Customs nor any officer of Customs shall admit to entry or clearance any ship or vessel subject and liable to the payment of any rates or duties, until the said rates and duties shall be paid to the persons authorized to receive the same.

7. All tonnage dues upon foreign vessels shall be assimilated to and in conformity with the tonnage dues of British vessels; and such foreign vessels shall be measured according to rules specified in an Act of the Imperial Parliament, passed in the fifty-seventh and fifty-eighth years of the reign of Her present Majesty, known as the "Merchant Shipping Act, 1894".

8. When there is an increase of tonnage dues arising from such measurement, the expense of the measuring surveyor shall be borne by the Government of the colony, but when otherwise, by the owner or master of such vessel.

9. Any officer duly authorized by law to collect rates or dues under this Act may go on board any vessel, being within three miles of any part of the coasts of this colony, and stay on board while she remains in port or within such distance, and may, in addition to the powers and procedure prescribed in section 5 of this Act, bring into port and detain such vessel until payment or satisfaction of all light dues by law recoverable.

10. No building or erection shall be built or placed in such position as to obstruct or interfere in any manner whatever with the light exhibited in any lighthouse or beacon, or with the leading lights exhibited as guides to vessels entering the harbour of St. John's.

11. Any person acting in contravention of the provisions of the preceding section shall be liable to a penalty not exceeding forty dollars, to be recovered in a summary manner by the order and adjudi-

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cation of a Justice of the Peace; and such penalty, with costs, may be levied by distress and sale of the goods and chattels of the offender by warrant under the hand of such justice, or the said offender may be committed to prison for a period not exceeding three months.

12. Any building or erection, contrary to the provisions of this Act, may be immediately removed by the Minister of Marine and Fisheries, and he may recover the cost of such removal, with costs of suit, in a summary suit for the same before any justice of the peace from any person so building or erecting such building or erection.

13. For the purpose of ascertaining the damage which may be occasioned to any person whose interests in any lands, houses, buildings, or other property, may be affected by carrying out or enforcing the provisions of this Act and providing compensation therefor, the same proceedings and remedies shall be had as are prescribed by section 163 of "The St. John's Municipal Act, 1892," so far as the same shall be applicable; and any compensation which may be awarded to such persons shall be paid out of the consolidated revenue of the colony.

14. It shall be held that any rates or dues levied and collected upon merchant ship or shipping as and for rates and dues under chapter 9 of the Consolidated Statutes of Newfoundland (second series), have been legally collected, and no action shall be brought or maintained in respect of any such rates or dues; despite any doubt which may exist as to the legality of such levy or collection.

15. Chapter 9 of the Consolidated Statutes of Newfoundland (second series) entitled "Of Light Dues and Lighthouses," is hereby repealed.

ACT OF JUNE 15, 1905.

(5 Edw. VII., cap. 4.)

AN ACT Respecting Foreign Fishing Vessels.

Be it enacted by the Governor, the Legislative Council and House of Assembly, in Legislative Session convened, as follows:—

1. Any Justice of the Peace, Sub-collector, Preventive Officer, Fishery Warden or Constable, may go on board any foreign fishing vessel being within any port on the coasts of this Island, or hovering in British waters within three marine miles of any of the coasts, bays, creeks or harbours in this Island, and may bring such foreign fishing vessel into port, may search her cargo and may examine the master upon oath touching the cargo and voyage; and the master or person in command shall answer truly such questions as shall be put to him under a penalty not exceeding five hundred dollars. And if such foreign fishing vessel has on board any herring, caplin, squid, or other bait fishes, ice, lines, seines, or other outfits or supplies for the fishery, purchased within any port on the coasts of this Island or within the distance of three marine miles from any of the coasts, bays, creeks, or harbours of this Island, or if the master of the said vessel shall have engaged, or attempted to engage, any person to form part of the crew of the said vessel in any port or on any part of the coasts of this Island, or has entered such waters for any purpose not permitted by treaty or convention for the time being in force, such vessel and the tackle, rigging, apparel, furniture, stores and cargo thereof shall be forfeited.

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2. All goods and vessels, and the tackle, rigging, apparel, furniture stores and cargo thereof, liable to forfeiture under this Act, may be seized and secured by any officer or person mentioned in the first section hereof, and every person opposing any such officer or person in the execution of his duty under this Act, or aiding or abetting any other person in such opposition, shall be deemed guilty of a misdemeanour and liable to a fine of five hundred dollars.

3. In any prosecution under this Act, the presence on board any foreign fishing vessel in any port of this Island, or within British waters aforesaid, of any caplin, squid, or other bait fishes, of ice, lines, seines, or other outfit or supplies for the fishery, shall be prima facie evidence of the purchase of the said bait fishes and supplies and outfits within such port or waters.

4. All offenders against the provisions of this Act may be prosecuted and convicted, and all fines, forfeitures, penalties, and other punishments imposed, recovered and made in a summary manner before a Stipendiary Magistrate, and any vessel, and the tackle, rigging, apparel, furniture, stores and cargo thereof liable to forfeiture under the provisions of this Act, may be sued for, prosecuted, recovered and condemned in a summary manner before a Stipendiary Magistrate in a proceeding against the master or other person in charge of such vessel. For the purposes of this Act all Stipendiary Magistrates shall be deemed to be Stipendiary Magistrates for the Colony, and may exercise the jurisdiction given by this Act in any part of the Colony.

5. If any person convicted under this Act shall feel himself aggrieved by such conviction, he may appeal there from, to the then next sitting of His Majesty's Supreme Court, holden in or nearest the place where such conviction shall have been had, or in St. Johns; Provided notice of such appeal, and of the cause and matter thereof, be given to the convicting Magistrate, in writing, within seven days next after such conviction, and the party desiring to appeal shall also, without fourteen days after such notice, give and enter into recognizance with two approved sureties before the convicting Magistrate, conditioned for the appearance of the person convicted at such next sitting of the Supreme Court, on the first day of such sitting, for the prosecution of the appeal with effect and without delay, to abide the judgment of the Court thereon, and for the delivery and surrender of any vessel or other property ordered to be confiscated, and to pay such costs as the Court may award.

6. No proceeding or conviction by, nor order of, any Magistrate or other officer under this Act, shall be quashed or set aside for any informality; provided the same shall be substantially in accordance with the intent and meaning of this Act.

7. Nothing in this Act shall affect the rights and privileges granted by Treaty to the subjects of any State in amity with His Majesty.

8. The Governor in Council may at any time, by proclamation, suspend the operation of this Act for such period as may be expedient and as shall be declared in such proclamation.

9. In this Act the word "vessel" shall include any boat or ship registered or not registered, jack, skiff, punt or launch, whether propelled by sails, oars or steam.

10. The Act 56 Vic., cap. 6, entitled "An Act respecting Foreign Fishing Vessels," is hereby repealed.

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ACT OF MAY 10, 1906.

(6 Edw. VII., cap. I.)[a]

AN ACT Respecting Foreign Fishing Vessels.

Be it enacted by the Governor, the Legislative Council and House of Assembly, in Legislative Session convened, as follows:—

1. Any Justice of the Peace, Sub-Collector, Preventive Officer, Fishery Warden or Constable, may go on board any foreign fishing vessel being within any port on the coasts of this Colony, or hovering in British waters within three marine miles of any of the coasts, bays, creeks, or harbours in this Colony, and may bring such foreign fishing vessel into port, may search her cargo, and may examine the master upon oath touching the cargo and voyage, and the master or person in command shall answer truly such questions as shall be put to him, under a penalty not exceeding five hundred dollars.

2. If any foreign fishing vessel be found within any port on the coasts of this Colony, or hovering in British waters within three marine miles of any of the coasts, bays, creeks, or harbours in this Colony, and having on board any herring, caplin, squid, or other bait fishes, ice, lines, seines, or other outfits or supplies for the fishery, purchased within any port on the coasts of this Colony or within the distance of three marine miles from any of the coasts, bays, creeks, or harbours of this Colony; or if the master, owner or agent of the said vessel shall have engaged or attempted to engage, any person to form part of the crew of the said vessel in any port, or on any part of the coasts of this Colony, or has entered such waters for any purpose not permitted by treaty or convention for the time being in force, the master, owner or agent shall be liable to a penalty not exceeding one hundred dollars, or such vessel and the tackle, rigging, apparel, furniture, stores and cargo thereof shall be forfeited, as the magistrate before whom the proceeding is taken shall determine.

3. All goods and vessels, and the tackle, rigging, apparel, furniture, stores and cargo thereof, liable to forfeiture under this Act, may be seized and secured by any officer or person mentioned in the first section hereof, and every person opposing any such officer or person in the execution of his duty under this Act, or aiding or abetting any other person in such opposition, shall be deemed guilty of a misdemeanor and liable to a fine of five hundred dollars.

4. In any prosecution under this Act, the presence on board any foreign fishing vessel in any port of this Colony, or within British waters aforesaid, of any caplin, squid, or other bait fishes, of ice, lines, seines, or other outfit or supplies for the fishery, shall be prima facie evidence of the purchase of the said bait fishes and supplies and outfits within such port or waters.

5. No alien, not so entitled by treaty or convention for the time being in force, shall fish in the waters of this Colony; and the master, owner or agent of any fishing vessel who permits any alien not so entitled to fish in, from, or for such vessel, shall be liable to a penalty not exceeding one hundred dollars, or to the forfeiture of such vessel, as the magistrate shall determine.

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[a] This Act was not brought into force, the assent of His Britannic Majesty being withheld pursuant to the Modus Vivendi of 1906 and by those of 1907 and 1908.

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6. No person, being a British subject, shall fish in, from, or for a foreign fishing vessel in the waters of this Colony, and the master, owner, or agent of any foreign fishing vessel who permits any such British subject to fish in, for, or from such vessel, shall be liable to a penalty not exceeding one hundred dollars, or to the forfeiture of such vessel, as the magistrate shall determine.

7. No person, being a resident of this Colony, shall leave this Colony for the purpose of engaging in foreign fishing vessels which are fishing or intending to fish in the waters of this Colony, under a penalty not exceeding one hundred dollars.

8. No person, being a resident of this Colony, shall sell, let, hire, lend or remove from this Colony, for the purpose of selling, letting, hiring, or lending to a master, owner or agent of any foreign fishing vessel any boats, nets, or gear, under a penalty not exceeding one hundred dollars; nor shall the master, owner, or agent of any foreign fishing vessel, buy, hire, or borrow, in any port or place in this Colony, or in the waters of this Colony, any boats, nets, or fishing gear, from any person resident in this Colony, under a penalty for each offence not exceeding one hundred dollars.

9. The master of any vessel who conveys any person resident in the Colony outside the waters of this Colony, for the purpose of enabling such person to be engaged on board any foreign fishing vessel, shall be liable to a penalty not exceeding one hundred dollars.

10. All offenders against the provisions of this Act may be prosecuted and convicted, and all fines, forfeitures, penalties, and other punishments imposed, recovered and made in a summary manner before a Stipendiary Magistrate; and any vessel, and the tackle, rigging, apparel, furniture, stores and cargo thereof, liable to forfeiture under the provisions of this Act, may be sued for, prosecuted, recovered and condemned in a summary manner before a Stipendiary Magistrate in a proceeding against the master or other person in charge of such vessel. For the purposes of this Act all Stipendiary Magistrates shall be deemed to be Stipendiary Magistrates for the Colony, and may exercise the jurisdiction given by this Act in any part of the Colony.

11. If any person convicted under this Act shall feel himself aggrieved by such conviction, he may appeal therefrom to the then next sitting of His Majesty's Supreme Court holden in or nearest the place where such conviction shall have been had, or in St. John's: Provided notice of such appeal, and of the cause and matter thereof, be given to the convicting magistrate in writing within seven days next after such conviction, and the party desiring to appeal shall also, within fourteen days after such notice, give and enter into recognizance, with two approved sureties, before the convicting magistrate, conditioned for the appearance of the person convicted at such next sitting of the Supreme Court on the first day of such sitting, for the prosecution of the appeal with effect and without delay, to abide the judgment of the Court thereon, and for the delivery and surrender of any vessel or other property ordered to be confiscated, and to pay such costs as the Court may award.

12. No proceeding or conviction by, nor order of, any Magistrate or other officer, under this Act shall be quashed or set aside for any informality; provided the same shall be substantially in accordance with the intent and meaning of this Act.

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13. All foreign fishing vessels exercising rights under any treaty or convention shall be amendable to all the laws of the Colony not inconsistent with any such rights under treaty or convention.

14. Nothing in this Act shall affect the rights and privileges granted by treaty to the subjects of any State in amity with His Majesty; and sections 1 and 4 hereof shall not be held to apply to any foreign fishing vessel resorting to the waters of this Colony for the exercise of treaty rights.

15. The Governor in Council may at any time by proclamation suspend or limit the operation of this Act, as to the whole Act or any part thereof, and in relation to the whole Colony, or any district or parts thereof, and as to all or any classes of persons, and for any period as shall be expedient and as may be declared in such proclamation.

16. In this Act the word "vessel" shall include any boat or ship, registered or not registered, jack, skiff, punt, or launch, whether propelled by sails, oars or steam.

17. The act 5, Ed. VII. Cap. 4, entitled "An Act respecting Foreign Fishing Vessels", is hereby repealed.

18. This Act shall come into operation upon a day to be appointed for that purpose, by proclamation of the Governor, to the effect that the same has been approved and confirmed by His Majesty in Council.

ACT OF FEBRUARY 18, 1908.

(8 Edw. VII., cap. II.)

AN ACT To amend "The Revenue Act, 1905."

[PASSED *18th February 1908.*]

Be it enacted by the Governor, the Legislative Council and House of Assembly, in Legislative Session convened, as follows:—

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3. There shall be paid by the owners or masters of all vessels entering the port of Fortune a rate or tax as follows, that is to say: On all vessels owned in Fortune a sum of fifteen cents per ton, and on all other vessels, local or foreign, a sum of five cents per ton; such rate or tax shall be collected in the same manner as light dues are at present collected, and shall be payable not more than once in every year. The amounts so collected shall be paid to such persons as shall be determined by the Governor in Council for the use of the town of Fortune.

FISHING REGULATIONS, 1908.

RULES AND REGULATIONS Respecting the Fisheries of the Colony of Newfoundland, made by the Governor-in-Council, under and by virtue of the provisions of the Act 61 Victoria, Cap. 3, entitled "An Act respecting the Department of Fisheries."

PART 1.

LOBSTER FISHERY.

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HERRING FISHERY.

19. Herring may be caught in nets or hauled in seines, and other contrivances, under the conditions and in the manner prescribed by these rules, and not otherwise.

20. No herring trap shall be used in the waters of the district of Placentia and St. Mary's or Fortune Bay. No purse seine shall be used in the waters of Newfoundland.

21. Unless otherwise provided, no person shall use a seine for the purpose of catching herring in any of the waters of Newfoundland, except exclusively for bait and for immediate use for that purpose in the fisheries, between the 1st day of April and the 1st day of August in any year.

22. (As amended.) Barring herring by any method is prohibited in all parts of the waters of Newfoundland, and in every case when a seine is used for the purpose of taking herring, it shall be hauled and tucked forthwith into the boat or boats, and not from the shore or strand, except when wanted exclusively for bait.

23. No person shall catch or take herring in a seine between the hours of twelve o'clock on Saturday night and twelve o'clock on Sunday night, under a penalty not exceeding one hundred dollars.

24. In the district of Twillingate the use of herring traps is forbidden. The use of seines or other contrivance, save stationary nets, for the capture of herring, is prohibited in the waters of Gut Arm, Toogood's Arm, Golsen's Arm, Pike's Arm, and Cobb's Arm, in the vicinity of Herring Neck; and in Friday Bay from Lobster Harbor west to Muddy Cove, Tizzard's Harbor, and from thence inside a straight line to Moor's Point; provided that herring may be taken at any time and by any means for bait purposes and for immediate use for these purposes in the fisheries.

25. No herring seine or herring trap shall be used for the purpose of taking herring on that part of the coast from Cape LaHune on the West Coast, and running by the West and North through the Straits of Belle Isle to Cape John.

26. No person shall use a seine for the purpose of catching herring in the waters of Placentia Bay, except exclusively for bait, and for immediate use for that purpose in the fisheries, between the 1st day of March and the 31st day of May in any year, in those portions of the waters of Placentia Bay which are enclosed by a line drawn from Placentiaman's Point, on the mainland, to Maggoty Cove Point in Sound Island, and by a line drawn from Sound Island Point, on the Southern side of Sound Island, to Hardy's Cove, Woody Island to the Western Point, and thence in a straight line to LaPlante on the mainland. All vessels coming to Sound Island for the purpose of catching or purchasing herring shall remain at anchor below the North-Eastern point of Sound Island (Bloody Point).

27. In case a seine has been shot around a shoal of herring, and nets have been placed in such a position as to prevent the hauling of such seine, the owner of such nets shall remove his nets on demand of the seine owner or his agent; and if the owner of the nets be not present, or shall refuse to remove such nets when required, the owner of the seine or his agent may remove such nets, or haul the nets shoreward with the seine, but in such case the owner of the seine shall com-

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pensate the owner of the nets for any damage done to the nets, and shall return the quantity, or pay the value, of such herring as may be in the nets.

28. When any person has commenced to shoot his seine no other person shall place or set any other fishing gear, net or other contrivance within such space the said seine is about to encompass.

29. In the shooting of seines the first person who throws out his rope and shoots, and continues to shoot his seine, shall be entitled to the sweep, and any person obstructing or preventing such person from so shooting, shall be guilty of any offence against these rules.

30. In case two seines shall be shot at the same time, and one seine shall be inside of the other, and herring be taken in both seines, the catch shall belong equally to both owners; but in case herring be taken only in one seine, the owner of the other seine shall have no claim to any portion of the catch.

31. In case two or more seiners shall shoot their seines at the same time, so as to form one circle, and neither secures his catch separately, the catch shall be equally divided.

32. When herring have been removed from a seine, such seine shall, within six hours thereafter, be taken out of the water, provided that the weather does not interfere with such removal; and in case such empty seine interferes with the mooring or operations of any other seine, such empty seine shall be forthwith removed by the owner.

33. Any person interfering with or obstructing the owner of a seine in the hauling or tucking thereof, or by rowing or making any kind of noise, or otherwise wilfully frightening herring from a seine, shall be guilty of an offence against these rules.

34. No person shall set any net so close to any seine as to stand over the mooring of such seine, and no person shall set his nets in such a manner as to submerge the nets of any other person.

35. Any person injuring or destroying the gear, nets, seines or other contrivances of any other person, or wilfully or illegally interfering with and destroying the catch of any other person, shall be guilty of an offence against these rules. The penalty for such offence shall be in addition to, and shall not be held to take away or affect any other remedy to which the injured party may be entitled.

36. In case fishing gear becomes so entangled that it cannot be cleared without injury, such gear may be taken on shore and the owners thereof shall aid and assist in the clearing of the same with as little injury as possible to the property of each other.

37. In case any person, in getting his gear out of water, is compelled to cut the rope of another person, such rope shall be securely tied before the same is dropped back into the water.

38. No herring shall be taken at any time or in any waters of this Colony for the purpose of being used as manure.

39. No person shall place herring on a scaffold in warm weather.

40. All fresh or green herring shall, in this Colony, be sold or purchased, delivered or received, by the standard measure, which shall be a barrel containing thirty-two imperial gallons, or a tub or half barrel containing sixteen imperial gallons, and shall be sold as they are taken or hauled from the water, without any cull or pick, any agreement to the contrary notwithstanding.

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41. All frozen herring shall, in this Colony, be sold or purchased, delivered or received, either by weight, or by the standard measure, which shall be one imperial bushel of eight gallons.

42. No vessel or craft of any description, loading or taking on board fresh, frozen or salted herrings in Newfoundland waters, shall anchor or be moored in any hauling-place, cove or inlet which herrings are in the habit of frequenting, or in which they are being caught.

43. The Department of Marine and Fisheries may appoint a Board of Harbor and Sanitary Commissioners in any place, the limits of which shall be defined in their appointment, to consist of one or more inhabitants of such place, and the duties of such one or more commissioners shall be to select and appoint suitable places where spoiled herring or other fish offal of lobster and other fishes, ballast and rubbish may be disposed without injury to the fisheries or the health of the inhabitants, and where vessels shall be moored; and any person who shall throw, place or deposit any such fish offal, ballast or rubbish, or shall moor any vessel at or within the said limits other than that so selected and appointed, shall be guilty of a violation of these rules.

44. No ballast or rubbish of any kind shall be thrown overboard from any vessel or boat inside of a straight line drawn from Mynter's Point to Bill Point, via Turnip's Cove, in Bay-du-Nord, Fortune Bay.

(*a*) No ballast or rubbish of any kind shall be thrown overboard from any vessel or boat coming to Bay-du-Nord Brook, Fortune Bay, inside of a straight line running across from Farrel's Cove Point to the outside point at Yankee Cove, provided that ballast from any vessel may be thrown under the wharves in said places, should the owner of the same consent thereto.

(*b*) No vessel, craft or boat shall anchor, or remain at anchor, or be moored anywhere in Bay d'East, Fortune Bay, for the purpose of freezing herring, or of loading or of taking on board fresh or frozen herring or herring to be salted, in bulk or in barrels, provided that any vessel, craft or boat coming to Bay d'East in the spring of the year, after the ice has disappeared, for fresh or salted herrings, may be allowed to anchor, dress or cure herrings inside of a straight line drawn from Indian Point to North-west Point at the mouth of North-west Brook.

(*c*) All vessels, crafts or boats coming to Simms' Brook, or St. Keel's, in Fortune Bay, for frozen or salted herrings, shall be moored fore and aft as close to land as they can safely float.

(*d*) No vessel shall anchor for the purpose of taking and icing down caplin bait in the harbor of Cape Broyle, in the district of Ferryland, outside a line drawn from Admiral's Head on the north side to Gentleman's Point on the south.

45. No person shall throw any herring from any scaffold, vessel or boat into the water; but all spoiled herrings, which cannot be disposed of as an article of human food, or for bait purposes, shall be carried to such places as the harbor and sanitary commissioners may direct, and be used as manure.

46. No person shall throw any ballast, sand or rubbish into the water which herring are known to frequent, but all such ballast, sand or rubbish shall be carried to such places as the harbor and Sanitary Commissioners may direct.

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COD FISHERY.

47. Upon the coast of Newfoundland and its dependencies no person shall use, for the purpose of taking codfish, any kind of trap, the walls or sides of which consist of meshes of less than three and a half inches. The opening of any part of the walls of a cod-trap and the lacing of any cod bag (or knitted twine of less than three and one-half inch mesh) for the purpose of removing fish from the cod-trap, shall be a violation of these rules; provided that it is permitted to lace a cod-bag of any size mesh to the head rope of a trap for the immediate removal of fish, and for that purpose only.

48. No person shall set on any of the fishing grounds of this Colony or its dependencies any cod-trap, at a less distance than eighty fathoms from the nearest point of any cod-trap previously set.

49. No person shall set on any of the fishing grounds of this Colony or its dependencies any cod-net or salmon net at a less distance than fifty fathoms from the nearest point of any cod-trap previously set, nor at a less distance than fifty fathoms from any other cod-net or salmon net previously set.

50. When any person shall have set a cod-net or salmon net or cod-trap, and the same shall have become damaged to any extent, rendering it necessary that it be taken up for the purpose of repair, he shall not thereby forfeit his right to re-set his cod-trap, cod-net or salmon-net in the place from whence it has been taken up; provided that the same be re-set within four days.

51. Any person using a herring seine or caplin seine on the coast of this Island to take or haul codfish shall be guilty of a violation of these rules.

52. It shall not be lawful for any person to throw overboard or deposit upon the fishing grounds or ledges on or near the coasts of this Colony or its dependencies, any heads, entrails, bones, or offal of any codfish.

53. (As amended). No person shall, at any time, place any bultow, cod net, cod-trap, or cod-trap mooring, in the waters surrounding South Island, Burnt Island and Gull Island, Twillingate, except in Burnt Island Tickle, between Hell's Mouth Head and Ragg's Point and those waters around South Island of Twillingate, extending from Ragged Point to Clam Cove; nor in the waters within two hundred fathoms of Cuckold's Rock, Little Rock, Sunken Rock, Shoal Ground and Battle Point Tickle, Tizzard's Harbor, in any year, until after the 20th day of October. Nor shall any person use any bultow, cod-net or jigger between Gut Tickle on the west, and the western point of Cobb's Arm, Duck Island, on the south-east, from the 10th day of June to the 10th day of November in any year; nor in the waters of Exploits Bay, Notre Dame Bay, westward of a line stretching across the entrance from Chance Harbor Head, on the south side, and running in a westerly direction to Muddy Hole on the north side of the Bay, shall any person use any contrivance other than hook and line for catching codfish.

54. (As amended.) In the District of Fogo, inside or north of a line running from the South Bill of Cape Fogo, direct from Western Head, no cod-trap or any part of a cod-trap shall be set at a greater distance than eighty fathoms from the shore. No cod-net or bultow shall be used after the 15th day of June in any year, nor further from

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the mainland than one-half of a mile extending from White Cove Point, Shoal Bay, westwardly to Hare Bay Head, Fogo; nor shall any cod-trap be set within one-quarter of a mile from Stone's Island, lying westward of the Pond Rock Tickle. No bultows may be used at any time outside of a line starting from Cape Fogo, thence northward with the Cape in a direct line from Copper Island until the lighthouse on Sloans' Hill becomes visible northward of Pigeon Island, thence on toward Storehouse Island, until Round Head bears west. Nor shall bultows be used on any part of the local fishing grounds bearing due east from any part of the coast between Cape Fogo and Round Head, inclusive, at any time in any year. No person shall use any cod-net, bultow or jigger, for catching codfish on that part of the coast of Newfoundland contained within the following limits or boundaries, that is to say: a line commencing at the mouth of Shalloway Brook, in the district of Fogo, thence running in a straight line to the most southerly point of South Penguin Island, thence in a straight line to the offer Wadham Island, thence in a straight line to Ragged Point, and thence following the line of coast to the place of commencement. No person shall, within the said limits or boundaries, throw into the water any fish offal. No cod-net shall be set in that portion of the waters of the coast between Round Head and Cape Fogo, before the 1st day of July and not after the 10th of August in any year. No cod-net shall be set in those waters outside a line running south from Round Head to Heeman's Rock, thence on with Heeman's Rock in a direct line with Round Head, until Careless Point is in a line with Keating Head, and thence in a direct line with Cape Fogo. No cod-trap or any portion thereof shall be set a greater distance than seventy fathoms from the shore of Oliver's Head Rock, nor from any part of the shore of Oliver's Bight, westward of a line drawn from Oliver's Head, five hundred fathoms in the direction of Bowling Pond Head, thence direct to Long Point. No cod jigger shall be used at any time during the fishing season on any of the fishing grounds outside of half a mile from Wild Cove Point of Shoal Bay to Hare Bay Head. No cod-jiggers or bultow shall be used to northeast of a straight line drawn from the south-west point of the southwest Storehouse Island to the north-east point of the Barracks. No cod-trap or mooring shall be set in the waters of that portion of the coast between Cape Fogo and Round Head, and then on to Wild Cove Point, Shoal Bay, before noon on the first day of June in any year, and if first day of June falls on a Sunday not before noon on day previous. Two poles or buoys moored to indicate the position in which it is intended a cod-trap is to be set (that is one at the centre back mooring keg and one at the door) shall be sufficient to hold a cod-trap space or berth, and the space or berth so indicated shall be regarded as if a cod-trap of average size were set in the position marked by these poles or buoys. No person shall mark with poles or buoys any more spaces than he can occupy with the same number of traps, and no person shall place any mark in the waters whilst his trap or traps are set.

55. No cod-jiggers, trawls, or bultows, shall be used inside of a line commencing at a point one-half mile north of the northern head of Salvage, thence east three miles, thence south to a line drawn east from the southern point of Little Harbor Head, in Bonavista Bay. Nor shall any bultow be used before the 20th day of September in any

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year, within four miles northward or westward of the shore, including Green Island, Stone Island or Gull Island, and Cape Island, between Black Head, Bonavista Bay, and Cape Bonavista; nor within three miles northward or eastward of the shore between Cape Island and Spillar's High Rock, in the vicinity of Cape Bonavista.

56. (As amended.) No person shall use any cod-trap or cod-net on any part of the fishing grounds around Ragged Islands, in Trinity Bay, opposite the mouth of Smith's Sound. No person shall use any bultow or trawl on the fishing grounds in Trinity Bay between a line running south-east from Deer Harbour (West) and a line running south-east from Seal Islands (East) nor inside of a line from Green Island, south-east of Ireland's Eye and half a mile off Bonaventure Head; nor between a line running south-east from Bonaventure Head (West) and a line running south extending three miles from the shore from Low Point north-east of the Horse Chops (East). Nor shall any bultow or float be used within three miles of the mainland between Breakheart Point in Trinity Bay to Split Point in Bacalieu Tickle.

57. (As amended.) In the district of Bay-de-Verde no person shall place in the water any cod-trap or cod-trap moorings or twine or gear of any description to secure a trap berth, before noon on the twenty-fifth day of May in any year between Breakheart Point and Red Head in Bacalieu Tickle.

In Conception Bay no trap may be set at a greater distance than eighty fathoms from a line drawn from headland to headland from Red Lands to Murphy's Island, at Job's Cove, nor shall any bultow or trawls be set within three miles of the land from Red Lands to Murphy's Island, at Job's Cove, between an imaginary line running south, south-east from each Point.

No person shall place in the waters any cod-trap or cod-trap mooring, or twine or gear of any description, to secure a trap berth, before noon on the 25th day of May in any year on the coast between Salmon Cove Head and Old Sow Point, thence to Feather Point, south side of Harbor Grace, including Harbor Grace and Carbonear Islands.

No person shall place any bultows in the waters of Conception Bay, or the Arms thereof, inside of a line running from Mosquito Point of Harbor Grace, in a southwardly direction to the easternmost point of Kelly's Island, and thence in a westwardly direction to Collier's Point, before the 15th day of July in any year.

58. (As amended.) No bultow or cod-net shall be set within three miles of the fishing ground between Empty Basket, north of the North head of Petty Harbor and Sugar Loaf, from June 1st to October 1st in any year. Nor shall any cod-net or cod-seine be used on the ledges of Petty Harbor East of a line one hundred and fifty fathoms from the shore from the North Head of Jones' Cove, nor East of a line running north-east three quarters of a mile from Alexander Head; nor outside of one hundred and fifty fathoms from the shore of any of the banks situated in the centre of the Bay of Petty Harbor, and known as "Tinker's Bank" and comprising the following:—Moim's Rock, Duck Ledge, Flat Hummocks, and Charlie's Rock. No cod-trap shall be set outside of one hundred and forty fathoms from the shore in any part of Petty Harbor Bay from the Motion Rock on the south shore to Lady Point on the north shore.

59. (As amended.) In the district of Ferryland, the use of floating trawls on the fishing grounds, from Golden Cove Point, South of

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Brigus to Gentleman's Place, north of Brigus, is permitted from 1st of June to 1st of August, and prohibited from 1st of August to 1st of October in any year.

No person shall use bultows for catching any codfish before the first of October in any year inside of a line to be drawn from Green Fish Point, southwest of Bay Bulls south head, to Long Point, northeast of Bay Bulls north head; nor at any time during the year within three miles of the land from the southern head of Bay Bulls to Cape Ballard. No cod-net or bultow shall be used or set on the fishing ground known as "Tinker's Fishing Ground," situate off Mobile in the district of Ferryland, the bearing of the same being as follows: From Bare Place, South Point, extending seaward one-and-a-half miles south-east by south, from west point of Neil's Cove one-and-a-half miles south by west. The use of floating trawls shall be permitted from the first day of May till the tenth day of August, within three miles of the coast-line extending from Crow Island, near Ferryland, to Caplin Bay Gut, both inclusive. No person shall use a seine for the taking of caplin from Burnt Point, Ferryland, to Freshwater, Ferryland, nor from Cape Broyle Head to Little Lance Cove in Cape Broyle Bay in the said district.

60. In that part of Placentia Bay, including the harbors and coves on the coast-line from Broad Cove Head in an easterly direction to the eastern end of Long Island, thence to Lake's Gut in Paradise, there shall be no bultows used.

61. No cod-net shall be used on the fishing grounds between St. John's Head, east of Bay de L'eau and Pass Island, including Connaigre Bay, in the district of Fortune Bay.

No bultows or cod-nets shall be used on the fishing grounds inside of a line drawn from Pass Island, to Grand Island, Bonne Bay, in the district of Fortune Bay. No trawl or bultow shall be set anywhere in the waters of Little Placentia, Hermitage Bay, in the district of Fortune Bay, inside of a line drawn from Passage Point to Margery Head on the south, inside of a line drawn from Muddy Hole to Day Cove on the north, in any year. No bultows shall be set on the shore of Grand Bank, Fortune Bay, from the first of August to the first of April in the following year, within the under-mentioned limits: from two miles west of Grand Bank Harbor, and within a line running north-west from the shore eastward, to a line running in the same direction from Famine Point in the same locality.

62. No bultows shall be used on the fishing grounds from Cape LaHune to Cape Ray, both inclusive, in the district of Burgeo and LaPoile.

63. (As Amended.) No person shall place in the waters of the Labrador Coast, any cod-trap, or cod-trap leader or mooring, nor shall it be lawful for any person to put out any contrivance whatsoever for the purpose of securing a trap-berth on that portion of the coast:—From Blanc Sablon to Gull Island, near the north-east point of Square Island, before noon of the first day of June; nor from Gull Island to a line drawn east and west (magnetic) from Collingham Island in Table Bay, before noon of the fifth day of June; nor from Collingham Island to Cape Porcupine before noon of the tenth day of June; nor from Cape Porcupine to Red Point in Byron's Island before noon of the fifteenth day of June; nor from Red Point to a line drawn

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east and west from a point two miles north-east of East Turnavik before noon of the twentieth day of June; nor from Turnavik to a line drawn east and west from Thumb Island, near Cape Harrigan before noon of the fifth day of July; nor from Thumb Island north, before noon of the tenth day of July in any year. Provided that when any of the above dates fall on Sunday, it shall be lawful to set the cod-trap or cod-trap leader, at or after noon on the day previous (Saturday). If any person shall set a cod-trap leader on the fishing grounds after the above dates, in order to secure the place for the setting of his cod-trap, and such person shall fail to set such cod-trap within four days after setting out such leader, it shall be lawful for any other person who may desire to secure the place where such leader was so set out for the setting of his (the latter's) cod-trap, to remove such leader, and then set his own leader or cod-trap in place thereof, and the latter shall be subject also to the provisions of this section as against any other who may so desire to set a leader of cod-trap; provided that if any person after setting his cod-trap leader shall be bona fide prevented by stress of weather or ice from setting his cod-trap within the said four days, such period shall be computed from the time at which the weather or ice shall permit of his setting such cod-trap.

No bultows or trawls shall be used before the fifteenth day of August in any year on the fishing grounds within three miles of the Coast of Labrador or Islands on said Coast between a line to be drawn south-east from Cape Charles and a line drawn from east and West from White Islands in Domino Run.

No cod-trap shall be set in Blackguard Bay, Labrador, except from the mainland or islands and rocks above water, inside a line to be drawn from Curlew Point, thence to Long Island Head to the north-west end of the Western Hare Island.

64. The use of cod-traps is entirely probibited in Port-au-Port Bay; that is to say, in East and West Bay, and extending from Long Point (or the Bar) to Bear Head, north of Serpentine River, in the District of St. George.

The use of trawls and bultows is prohibited on the fishing grounds from the west point of Hillier's Harbor to Pyramid Point, near Cape Rogue, White Bay, in the District of St. Barbe.

(Added.) The use of trawls or bultows is prohibited on the fishing grounds inside one mile from the shore in Pinnaire Bay in the Straits of Belle Isle.

WHALE FISHERY.

* * * * * * *

GENERAL.

77. The barring of caplin by seines is prohibited in the waters of Newfoundland, and in every case when a seine is used it shall be hauled and tucked forthwith into the boat or boats, and not from the shore. No person shall, at any time, in the waters of Newfoundland, haul, catch or take squid within or by means of any seine, bunt or other such contrivance.

78. No person shall between the hours of twelve o'clock on Saturday night and twelve o'clock on Sunday night, take or catch in any

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manner whatsoever, any herring, caplin, squid, or any other bait fish, or set or put out any contrivance whatsoever for the purpose of taking or catching herring, caplin, squid, or other bait fish. Caplin may be taken for fertilizing purposes by farmers or their employees during the usual season.

79. No person shall dig, take, buy, sell, ship or put, or assist in shipping or putting on board any boat, ship or vessel, or carry in or on board of any ship, vessel or boat, any clams, mussels, scallops, cock-and-hens, or other shell fish, for the purpose of exportation, or for any other purpose, except that of being bona fide for bait for the fisheries of this Colony, or of the same as prosecuted therefrom, or under a foreign fishing license in accordance with the rules thereon: Provided that any such shell fish may be taken for local food purposes and for boiling and canning.

80. No herring shall be sold to any foreign fishing vessel, licensed under the laws of this Colony to purchase bait, under one dollar and twenty-five cents a barrel of thirty-two imperial gallons, to be paid by the master or crew of said foreign fishing vessel; nor any caplin under four dollars a dory load, or forty cents per barrel of thirty-two imperial gallons; nor any squid for less than twenty cents per hundred by count, or two dollars per barrel of thirty-two imperial gallons.

81. Fish required for scientific, procreative or experimental purposes, may, under the written permission of the Secretary of the Fisheries' Board, the Minister of Marine and Fisheries, or the Deputy Minister thereof, be taken by any method at any time, anything in these rules to the contrary notwithstanding.

82. The Governor in Council may grant to any person a license to erect houses on any part of the coast of this Colony for the cold storage of bait fishes, and no person shall erect houses for the cold storage of bait fishes on any part of the coast of the Colony without having first obtained a license.

83. All regulations heretofore made under the provisions of the aforesaid Act are hereby repealed.

84. Nothing in these rules shall affect any proceedings commenced, or any penalty incurred, or any rights acquired, prior to their coming into operation.

NOTE.—The penalties applicable to the foregoing rules are provided in the aforesaid Act, and are as follows: "Everyone who violates any provisions of this Act, or of the regulations under it, shall be liable to a penalty not exceeding one hundred dollars and costs, and in default of payment, to imprisonment for a term not exceeding two months. All materials, implements or appliances used, and all fish caught, taken or killed in violation of this Act, or any regulations under it, shall be confiscated to His Majesty, and may be seized on view by any fishing officer, or taken or removed by any person, for delivery to any Justice of the Peace."

ELI DAWE,
Minister of Marine and Fisheries.

St. John's, Newfoundland,
April 20th, 1905.

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PROCLAMATION.

By His Excellency Sir William McGregor, Doctor of Medicine, Knight Commander of the Most Distinguished Order of St. Michael and St. George, Companion of the Most Honorable Order of the Bath, Governor and Commander-in-Chief in and over the Island of Newfoundland and its Dependencies.

Wm. McGregor, Governor, [L. S.]

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

Whereas under and by virtue of Chapter 129 of the Consolidated Statutes (Second Series), entitled "Of the Exportation, Sale, etc., of Bait Fishes," the Governor in Council is authorized to limit the operation of the said Chapter and the issue of licenses thereunder in relation to any district or part of this Colony or the coast thereof, and for such period and in relation to sale or exportation to such places or for such purposes and in such quantities as shall appear expedient;

And, whereas, under and by virtue of the Act passed in the 61st year of the reign of Her late Majesty, entitled "An Act relating to the Department of Marine and Fisheries," the Governor in Council is also authorized to make and prescribe rules and regulations for the management and regulation of the fisheries of this Colony;

And, whereas, in pursuance of such authority, I, the Governor in Council, have made certain rules and regulations in relation to the aforesaid matters, which rules and regulations are as follows:

1. The master or other person in charge of any vessel engaged in the prosecution of the Bank or Deep Sea Fishery, beyond the territorial jurisdiction of this Colony, and being a British ship or navigated according to the laws of the United Kingdom or of any British colony or possession, may obtain a license hereafter called a Deep Sea Bait License, which shall apply to such vessel and under and by virtue of which it shall be lawful to put and have on board of such vessel in any port or place in this Colony a supply of bait as hereinafter limited and provided for the actual prosecution of the fishery by and on board of such vessel for and during the current fishing season.

2. The master or other person in charge of any vessel, being a British ship or navigated according to the laws of the United Kingdom, or of any British colony or possession, may obtain a license hereinafter called an Export Bait License, which shall apply to such vessel and under and by virtue of which it shall be lawful to have and put on board of such vessel in any port or place in the Colony bait fishes for exportation for food or consumption.

3. Any person who shall sell to, or put on board of any vessel, the master or other person in charge of which shall not have taken a license hereunder, or who shall sell for the purpose of being put on board of any such vessel, any bait fishes, shall be liable to a fine of five hundred dollars, or in default of payment thereof, or in the alternative, to imprisonment for a term not exceeding three months.

4. No license shall be granted except upon the written application of the master or person in charge of the vessel. The application shall be in the form appended hereto, and the applicant before receiving said license, shall make oath before a sub-collector or officer of Customs, or commissioner specially appointed, of the truth of the facts set forth in said application.

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5. Licenses shall be obtained in all cases before the catching, purchasing or taking on board of any bait fishes.

6. Under and by virtue of a Deep Sea Bait License, it shall be lawful to obtain and put on board of the vessel to which it applies a supply of bait for every trip or voyage of the quantities following:

If herring, at the rate of eight barrels for every dory carried in and employed by and from the vessel for the trip or voyage;

If caplin, at the rate of ten barrels for each dory;

If squid, at the rate of four barrels for each dory.

7. After the obtaining of any supply of bait under a Deep Sea License for any trip or voyage, the following periods shall elapse before the taking of the next supply:

If of herring, not less than eighteen days;

If of caplin or squid, not less than fourteen days.

8. After the obtaining of any supply of bait under a Deep Sea License, the master, or other person in charge of the vessel, not being a vessel defined by section 109 of the Customs' Act, 1898, shall forthwith report to the nearest Customs' officer the fact of having obtained and put on board such supply, the date, place, when and where obtained and the description and quantity obtained and shipped on board. Such reports shall be verified upon oath, which the officer is hereby empowered to administer, and the particulars so furnished shall be endorsed by the Customs' officer upon the license.

9. Upon arrival from every trip or voyage the master or person in charge of every vessel, not being a vessel defined by Section 109 of the Customs' Act, 1898, to which a Deep Sea License is granted, shall forthwith report to the nearest Customs' officer and produce his license, and the fact of such report and the date thereof shall be endorsed by the officer upon the license.

10. Bait fishes, taken under a Deep Sea License and put or shipped on board of any vessel to which such license applies, shall not be transferred to or put on board of any vessel other than that for which the license is granted, or in any other place, nor landed in any foreign country, nor used or disposed of in any other way than for bait purposes as above prescribed, or destroyed if not required for such purpose.

11. Any person applying for an Export Bait License shall, before receiving the same, give a bond to the Minister of Finance and Customs with two sufficient sureties in the sum of not less than one thousand dollars nor more than two thousand dollars each, containing the condition that the terms of the license shall be in all respects complied with and that satisfactory proof of the landing of the cargo at its destination will be furnished within a stated period. The forfeiture of the penal sum under such bonds shall be in addition to any other penalty, forfeiture or punishment imposed by any existing law.

12. Any justice of the peace, sub-collector of the customs, preventive officer, fishery warden, constable or commissioner, specially appointed, may board any vessel suspected of carrying bait fishes, which have been taken contrary to these rules, and in case any such justice, sub-collector, preventive officer, fishery warden, constable or commissioner shall make signal to any vessel suspected as aforesaid, from any vessel employed by the Government by dipping a flag from a mast-head or peak three times or firing a gun, it shall be the duty of the owner, master or person managing or controlling such vessel so

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signalled to heave-to such vessel until such justice, sub-collector, preventive officer, fishery warden, constable or commissioner, shall have boarded and examined such last-named vessel, and in case of such master, owner, or person managing or controlling as aforesaid such last-named vessel omitting so to heave-to, or to afford facilities for such justice, sub-collector, preventive officer, fishery warden, constable or commissioner boarding or examining such vessel, he shall be subject to a penalty of five hundred dollars, or in default of payment, to imprisonment for a period of three months. The master of any vessel who shall refuse to obey or unreasonably delay in obeying such signal may be arrested and brought before a justice of the peace, and his vessel may be seized and held by any such justice, sub-collector, preventive officer, fishery warden, constable or commissioner until an adjudication shall have taken place upon a complaint hereunder.

13. Any person found hauling, catching, taking, purchasing, selling, shipping, or conveying bait fishes, or any person having such bait fishes in his possession, or the master, owner or crew of any boat or vessel on board of which any bait fishes may be found, may be examined on oath by a justice of the peace, sub-collector, preventive officer, fishery warden or commissioner, specially appointed, as to the quantity and kind of bait fishes in his possession or on board of such boat or vessel, the purpose for which such bait fishes are intended to be used or as to the place to which such bait fishes are intended to be conveyed or exported, and upon his refusing to answer, or answering untruly, such justice, sub-collector, preventive officer, fishery warden or commissioner may seize the boat or vessel on board of which such bait fishes shall have been hauled or caught or put, kept, shipped, carried, conveyed or exported, or on board of which the same may have been found, her tackle, apparel, furniture and outfit and the said bait fishes so found as aforesaid, and may hold the same until an adjudication shall have been had upon a complaint in relation to such alleged offences.

14. Any person who shall be guilty of any breach or violation of, or non-compliance with these rules and regulations, or of the terms and conditions of any license granted hereunder, or of aiding, abetting, or assisting in or procuring any such breach, violation or non-compliance, shall be liable to a penalty not exceeding five hundred dollars, or in the alternative or in default of payment of such penalty to imprisonment not exceeding six months.

15. In addition to any penalty or punishment provided by these rules, the vessel in, on board of, or in respect of which any breach or violation of, or non-compliance with such rules has taken place, and any boats, seines, nets, implements and appliances used in, upon or in connection with such breach, violation, or non-compliance, shall be liable to confiscation, and any license, the terms of which may have been violated, shall be forfeited.

16. All offences under these rules and all penalties and forfeitures thereby provided shall be prosecuted and imposed in a summary manner before any Stipendiary Magistrate or Justice of the Peace.

17. If any person convicted under these rules shall feel himself aggrieved by such conviction, and the penalty imposed exceeds one hundred dollars, or the penalty and the value of any boat, gear or other property forfeited together amount to more than one hundred dollars, he may appeal therefrom to the then next sitting of His Majesty's Supreme Court, holden in or nearest the place where such

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conviction shall have been had, or in St. John's: Provided notice of such appeal and of the cause and matter thereof be given to the convicting magistrate or justice in writing, within seven days next after such conviction, and the party desiring to appeal shall also within fourteen days after such notice give and enter into recognizances with two approved sureties before the convicting magistrate or justice, conditioned for the appearance of the person convicted at such next sitting of the Supreme Court, and the first day such sitting, for the prosecution of the appeal with effect and without delay to abide the judgment of the Court thereon, and for the delivery and surrender of any vessel or other property ordered to be confiscated and to pay such costs as the Court may award.

18. No proceeding or conviction by, nor order of, any magistrate or other officer under these rules shall be quashed or set aside for any informality, provided the same shall be substantially in accordance with these rules.

19. No person shall—

(1) Export or cause or procure to be exported, or assist in the exportation of; or

(2) Haul, catch, take or have in his possession, for the purpose of exportation; or

(3) Purchase or receive in trade or barter, for the purpose of exportation; or

(4) Take, ship or put or haul on board, or assist in taking, shipping, putting, or hauling on board of any ship or vessel, for any purpose whatever; or

(5) Carry or convey on board of any ship or vessel for any purpose whatsoever, any herring, caplin, squid, or other bait fishes, from, on or near any parts of this Colony or its dependencies, or from or in any of the bays, harbors or other places therein without a license in writing to be granted and issued as hereinbefore provided.

20. Licenses shall be in the form as set forth herein, and shall be signed by the Customs' officer before whom the affidavit hereinbefore referred to is made.

21. In these rules "bait" and "bait fishes" shall mean and include herring, caplin and squid; and "vessel" shall include any boat or ship, registered or not registered, jack, skiff, punt or launch, whether propelled by sails, oars or steam.

22. The rules and regulations made by the Governor in Council and contained in the Proclamation of His Excellency the Governor, of date 1st of June, A. D. 1898, are hereby rescinded.

Nothing in these rules shall affect the rights and privileges granted by treaty to the subjects of any state in amity with His Majesty.

Now, therefore, I, the Governor, by and with the advice of the Executive Council, do hereby declare and make known to all whom it doth or may concern that the said rules and regulations are and shall hereafter be and continue in full force and effect. And all magistrates, constables, customs and other officers, and all others whom it doth or may concern, are hereby required to take notice thereof and govern themselves accordingly.

Given under my Hand and Seal, at the Government House, in St. John's, this 14th day of April, A. D. 1905.

By His Excellency's Command.

R. BOND,
Colonial Secretary.

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SECTION III

OF THE APPENDIX

OF THE

CASE OF THE UNITED STATES

CORRESPONDENCE, DOCUMENTS, AND PAPERS

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PRIOR TO THE TREATY OF 1818.

PERTAINING TO THE NEGOTIATION OF THE TREATY OF 1783.

Articles agreed on between the American and British plenipotentiaries.[a]

[These articles were sent to England for the King's consideration. See Franklin to Livingstone, December 5, 1782, *infra*.]

OCTOBER 8th, 1782.

Articles agreed upon by and between Richard Oswald, esq., the commissionr of his Britannic majesty for treating of peace with the commissioners of the United States of America, on the behalf of his said majesty on the one part, and Benjamin Franklin and John Jay, of the commissioners of the said States for treating of peace with the commissioner of his said majesty on their behalf, on the other part, to be inserted in and to constitute the treaty of peace proposed to be concluded between the crown of Great Britain and the said United States; but which treaty is not to be concluded until his Britannic majesty shall have agreed to the terms of peace between France and Britain, proposed or accepted by his most Christian majesty, and shall be ready to conclude with him such treaty accordingly, it being the duty and intention of the United States not to desert their ally, but faithfully and in all things to abide by and fulfill their engagements with his most Christian majesty.

* * * * * * *

3dly. That the subjects of his Britannic Majesty and people of the said United States, shall continue to enjoy unmolested, the rights to take fish of every kind on the banks of Newfoundland, and other places where the inhabitants of both countries used formerly, to wit, before the last war between France and Britain, to fish and also to dry and cure the same at the accustomed places, whether belonging to his said Majesty or to the United States; and his Britannic Majesty and the said United States will extend equal privileges and hospitality to each other's fishermen as to their own.

4thly. That the navigation of the river Mississippi, from its source to the ocean, shall forever remain free and open, and that both there, and in all rivers, harbors, lakes, ports, and places, belonging to his Britannic Majesty or to the United States, or in any part of the world, the merchants and merchant ships, of the one and the other, shall be received, treated, and protected, like the merchants and merchant ships of the sovereign of the country. That is to say, the British merchants and merchant ships, on the one hand, shall enjoy in the United States, and in all places belonging to them, the same

[a] This paper and those following, down to and including the letter of Mr. Franklin to Mr. Livingston, December 5 1782, are extracted from Wharton's Diplomatic Correspondence of the American Revolution.

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protection and commercial privileges, and be liable only to the same charges and duties as their own merchants and merchant ships; and on the other hand, the merchants and merchant ships of the United States, shall enjoy in all places belonging to his Britannic Majesty, the same protection and commercial privileges, and be liable only to the same charges and duties of British merchants and merchant ships, saving always to the chartered trading companies of Great Britain, such exclusive use and trade, and their respective posts and establishments as neither the subjects of Great Britain, nor any of the more favored nations participate in.

PARIS, *October 8, 1782.*

A true copy of which has been agreed on between the American commissioners and me, to be submitted to his majesty's consideration.

RICHARD OSWALD.

Articles taken to England by Mr. Strachey.[a]

NOVEMBER 5, 1782.

Articles agreed upon by and between Richard Oswald, commissioner of his Britannic majesty for treating of peace with the commissioners of the United States of America, on behalf of his said majesty, on the one part; and John Adams, Benjamin Franklin, and John Jay, three of the commissioners of the said States, for treating of peace with the commissioner of his said majesty on their behalf, on the other part, to be inserted in, and to constitute the treaty of peace proposed to be concluded between the Crown of Great Britain and the said United States; but which treaty is not to be concluded until his Britannic majesty shall have agreed to the terms of peace between France and Britain, proposed or accepted of by his most Christian majesty, and shall be ready to conclude with him such treaty accordingly; it being the duty and intention of the United States not to desert their ally, but faithfully and in all things to abide by and fulfill their engagements with his most Christian majesty.

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That the subjects of his Britannic majesty and the people of the said United States shall continue to enjoy unmolested the right to take fish of every kind on all the banks of Newfoundland, also in the Gulf of St. Lawrence, and all other places where the inhabitants of both countries used at any time heretofore to fish; and also to dry and cure their fish on the shores of the Isle of Sables; Cape Sables, and the shores of any of the unsettled bays, harbors, or creeks of Nova Scotia, and of the Magdalen Islands. And his Britannic majesty and the said United States will extend equal privileges and hospitality to each other's fishermen as to their own.

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That the navigation of the River Mississippi, from its source to the ocean, shall forever remain free and open.

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[a] The articles were agreed to after the return of the first set, which had been sent to England October 8.

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Third Set of Articles.

NOVEMBER 25, 1782.

The three commissioners, Adams, Franklin, and Jay, met at Mr. Oswald's lodgings at the Hotel de Muscovie, and after some conference Mr. Oswald delivered them the following articles, as fresh proposals of the British ministry, sent by Mr. Strachey, viz:

Articles agreed upon by and between Richard Oswald, the commissioner of his Britannic majesty for treating of peace with the commissioners of the United States of America, in behalf of his said majesty on the one part, and John Adams, Benjamin Franklin, and John Jay, three of the commissioners of the said States, for treating of peace with the commissioner of his said majesty, on their behalf on the other part, to be inserted in, and to constitute the treaty of peace proposed to be concluded between the crown of Great Britain and the said United States, but which treaty is not to be concluded until the terms of a peace shall be agreed upon between Great Britain and France, and his Britannic majesty shall be ready to conclude such treaty accordingly.

Whereas reciprocal advantages and mutual convenience are found by experience to form the only permanent foundation of peace and friendship between states, it is agreed to form the articles of the proposed treaty on such principles of liberal equity and reciprocity as that partial advantages (those seeds of discord) being excluded, such a beneficial and satisfactory intercourse between the two countries may be established as to promise and secure to both perpetual peace and harmony.

* * * * * * *

ARTICLE III. The citizens of the said United States shall have the liberty of taking fish of every kind on all the banks of Newfoundland, and also in the Gulf of St. Lawrence; and also to dry and cure their fish on the shores of the Isle of Sables and on the shores of any of the unsettled bays, harbors, and creeks of the Magdalen Islands, in the Gulf of St. Lawrence, so long as such bays, harbors, and creeks shall continue and remain unsettled; on condition that the citizens of the said United States do not exercise the fishery, but at the distance of three leagues from all the coast belonging to Great Britain, as well those of the continent as those of the islands situated in the Gulf of St. Lawrence. And as to what relates to the fishery on the coast of the Island of Cape Breton out of the said gulf, the citizens of the said United States shall not be permitted to exercise the said fishery, but at the distance of fifteen leagues from the coasts of the Island of Cape Breton.

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ARTICLE VIII. The navigation of the Mississippi, from its source to the ocean, shall forever remain free and open to the subjects of Great Britain and citizens of the United States.

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Extracts from J. Adams' Journal of Peace Negotiations.

NOVEMBER 25, 1782.

Doctor Franklin, Mr. Jay, and myself, at 11 o'clock, met at Mr. Oswald's lodgings. Mr. Strachey told us he had been to London, and waited personally on every one of the King's cabinet council, and had communicated the last propositions to them. They every one of them unanimously condemned that respecting the Tories, so that that unhappy affair stuck, as he foresaw and foretold it would.

The affair of the fishery too was somewhat altered. They could not admit us to dry on the shores of Nova Scotia, nor to fish within three leagues of the coast, nor within fifteen leagues of the coast of Cape Breton. The boundary they did not approve. They thought it too extended, too vast a country; but they would not make a difficulty. That if these terms were not admitted, the whole affair must be thrown into Parliament, where every man would be for insisting on restitution to the refugees. He talked about excepting a few, by name, or the most obnoxious of the refugees.

I could not help observing, that the ideas respecting the fishery appeared to me to come piping hot from Versailles. I quoted to them the words of our treaty with France, in which the indefinite and exclusive right to the fishery on the western side of Newfoundland was secured against us, according to the true construction of the treaties of Utrecht and Paris. I showed them the 12th and 13th articles of the treaty of Utrecht, by which the French were admitted to fish from Cape Bonavista to Point Riche. I related to them the manner in which the cod and haddock came into the rivers, harbors, creeks, and up to the very wharves, on all the northern coasts of America, in the spring, in the month of April, so that you have nothing to do but step into a boat and bring in a parcel of fish in a few hours. But that in May they began to withdraw. We have a saying in Boston, that "when the blossoms fall, the haddock begin to crawl," i. e., to move into deep water; so that in summer you must go out some distance to fish; at Newfoundland it was the same. The fish in March and April were in shore, in all the creeks, bays, and harbors, i. e., within three leagues of the coasts or shores of Newfoundland and Nova Scotia; that neither French nor English could go from Europe and arrive early enough for the first fare; that our vessels could, being so much nearer—an advantage which God and nature had put into our hands; but this advantage of ours had been an advantage to England; because our fish had been sold in Spain and Portugal for gold and silver, and that gold and silver sent to London for manufactures; that this would be the course again; that France foresaw it, and wished to deprive England of it, by persuading her to deprive us of it; that it would be a master stroke of policy if she could succeed; but England must be completely the dupe before she would succeed.

There were three lights in which it might be reviewed. 1st. As a nursery for seamen. 2d. As a source of profit. 3d. As a source of contention. As a nursery of seamen, did England consider us as worse enemies than France? Had she rather France should have the seamen than America? The French marine was nearer and more menacing than ours. As a source of profit, had England rather France should supply the markets of Lisbon and Cadiz with fish,

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and take the gold and silver, than we? France would never spend any of that money in London. We should spend it all, very nearly. As a source of contention, how could we restrain our fishermen (the boldest men alive) from fishing in prohibited places? How could our men see the French admitted to fish, and themselves excluded by the English? It would then be a cause of disputes, and such seeds France might wish to sow. That I wished for two hours' conversation on the subject with one of the King's council. If I did not convince him he was undesignedly betraying the interest of his sovereign, I was mistaken. Strachey said, perhaps I would put down some observations in writing upon it; I said, with all my heart, provided I had the approbation of my colleagues; but I could do nothing of the kind without submitting it to their judgments; and that whatever I had said or should say upon the subject, however strongly I might express myself, was always to be understood with submission to my colleagues. I showed them Captain Coffin's letter and gave them his character. His words are:

"Our fishermen from Boston, Salem, Newbury, Marblehead, Cape Ann, Cape Cod, and Nantucket, have frequently gone out on the fisheries to the Straits of Belleisle, north part of Newfoundland, and the banks adjacent thereto, there to continue the whole season, and have made use of the north part of Newfoundland, the Bradore coast, in the Straits of Belleisle, to cure their fish, which they have taken in and about those coasts. I have known several instances of vessels going there to load in the fall of the year, with the fish taken and cured at these places, for Spain, Portugal, &c. I was once concerned in a voyage of that kind myself, and speak from my own knowledge.

"From Cape Sables to the Isle of Sables, and so on to the banks of Newfoundland, are a chain of banks extending all along the coast, and almost adjoining each other, and are those banks where our fishermen go for the first fare, in the early part of the season. Their second fare is on the banks of Newfoundland, where they continue to fish till prevented by the tempestuous and boisterous winds which prevail in the fall of the year on that coast. Their third and last fare is generally made near the coast of Cape Sables, or banks adjoining thereto, where they are not only relieved from those boisterous gales, but have an asylum to fly to in case of emergency, as that coast is lined from the head of Cape Sables to Halifax with most excellent harbors. The sea-cow fishery was, before the present war, carried on to great advantage, particularly from Nantucket and Cape Cod, in and about the river St. Lawrence, at the Island St. Johns and Anticosti, Bay of Chaleurs, and the Magdalen Islands, which were the most noted of all for that fishery. This oil has the preference to all others, except spermaceti."

Mr. Jay desired to know whether Mr. Oswald had now power to conclude and sign with us. Strachey said he had, absolutely. Mr. Jay desired to know if the propositions now delivered us were their ultimatum. Strachey seemed loath to answer, but at last said no. We agreed these were good signs of sincerity. Bancroft came in this evening and said it was reported that a courier had arrived from M. Rayneval, in London, and that after it, the Count de Vergennes told the king that he had the peace in his pocket, that he was now master of the peace.

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NOVEMBER 26, 1782.

Breakfasted at Mr. Jay's with Dr. Franklin, in consultation upon the propositions made to us yesterday by Mr. Oswald. We agreed unanimously to answer him that we could not consent to the article respecting the refugees as it now stands. Dr. Franklin read a letter which he had prepared to Mr. Oswald upon the subject of the Tories, which we had agreed with him that he should read as containing his private sentiments. We had a vast deal of conversation upon the subject. My colleagues opened themselves and made many observations concerning the conduct, crimes, and demerits of those people. Before dinner Mr. Fitzherbert came in, whom I had never seen before, a gentleman of about thirty-three; seems pretty discreet and judicious, and did not discover those airs of vanity which are imputed to him. He came in consequence of the desire I expressed yesterday of knowing the state of the negotiation between him and the Count de Vergennes respecting the fishery. He told us that the Count was for fixing the boundaries where each nation should fish; he must confess he thought the idea plausible for that there had been great dissensions among the fishermen of the two nations; that the French marine office had an apartment full of complaints and representations of disputes; that the French pretended that Cape Ray was the Point Riche.

I asked him if the French demanded of him an exclusive right to fish and dry between Cape Bonavista and the Point Riche. He said they had not expressly, and he intended to follow the words of the treaty of Utrecht and Paris, without stirring the point. I showed him an extract of a letter from the Earl of Egremont to the Duke of Bedford, March 1, 1763, in which it is said that by the 13th article of the treaty of Utrecht a liberty was left to the French to fish and to dry their fish on shore, and for that purpose to erect the necessary stages and buildings, but with an express stipulation "de ne pas sejourner dans la dite Isle, au delà du dit tems nécessaire pour pêcher et sécher les poissons." That it is a received law among the fishermen, that whoever arrives first shall have his choice of the stations; that the Duc de Nivernois insisted that by the treaty of Utrecht the French had an exclusive right to the fishery from Cape Bonavista to Point Riche; that the King gave to his Grace the Duke of Bedford express instructions to come to an eclaircissement upon the point with the French ministry, and to refuse the exclusive construction of the treaty of Utrecht. I also showed him a letter from Sir Stamier Porteen, Lord Weymouth's secretary, to Lord Weymouth, enclosing an extract of Lord Egremont's letter to the Duke of Bedford, by which it appears that the Duc de Nivernois insisted "that the French had an exclusive right to the fishery from Cape Bonavista to Point Riche, and that they had, on ceding the Island of Newfoundland to Great Britain by the thirteenth article of the treaty of Utrecht, expressly reserved to themselves such an exclusive right, which they had constantly been in possession of till they were entirely driven from North America in the last war."

For these papers I am obliged to Mr. Izard. Mr. Fitzherbert said it was the same thing now, word for word, but he should endeavor to have the treaty conformable to those of Utrecht and Paris. But he said we had given it up by admitting the word "exclusive" into our treaty. I said perhaps not, for the whole was to be conform-

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able to the true construction of the treaties of Utrecht and Paris, and that if the English did not now admit the exclusive construction, they could not contend for it against us. We had only contracted not to disturb them, &c. I said it was the opinion of all the fishermen in America that England could not prevent our catching a fish without preventing themselves from getting a dollar; that the first fare was our only advantage; that neither the English nor French could have it; it must be lost if we had it not. He said he did not think much of the fishery as a source of profit, but as a nursery of seamen. I told him the English could not catch a fish the more or make a sailor the more for restraining us; even the French would rival them in the markets of Spain and Portugal. It was our fish they ought to call their own, because we should spend the profit with them; that the Southern States had staple commodities, but New England had no other remittances than the fishery, no other way to pay for their clothing; that it entered into our distilleries and West India trade, as well as our European trade, in such a manner that it could not be taken out or diminished without tearing and rending; that if it should be left to its natural course we could hire or purchase spots of ground on which to erect stages and building, but if we were straitened by treaty that treaty would be given in instructions to governors and commodores, whose duty it would be to execute it; that it would be very difficult to restrain our fishermen, they would be frequently transgressing and making disputes and troubles.

He said his principal object was to avoid sowing seeds of future wars. I said it was equally my object, and that I was persuaded that if the germ of a war was left anywhere there was the greatest danger of its being left in the article respecting the fishery. The rest of the day was spent in endless discussions about the Tories. Dr. Franklin is very staunch against them, more decided a great deal on this point than Mr. Jay or myself.

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NOVEMBER 29.

Met Mr. Fitzherbert, Mr. Oswald, Mr. Franklin, Mr. Jay, Mr. Laurens and Mr. Strachey, at Mr. Jay's Hotel d'Orleans, and spent the whole day in discussions about the fishery and the Tories. I proposed a new article concerning the fishery; it was discussed and turned in every light, and multitudes of amendments proposed on each side, and, at last, the article drawn as it was finally agreed to. The other English gentlemen being withdrawn upon some occasion, I asked Mr. Oswald if he could not consent to leave out the limitation of three leagues from all their shores, and the fifteen from those of Louisbourg.

He said, in his own opinion, he was for it; but his instructions were such that he could not do it. I perceived by this, and by several incidents and little circumstances before, which I had remarked to my colleagues, who were much of the same opinion, that Mr. Oswald had an instruction not to settle the articles of the fishery and refugees without the concurrence of Mr. Fitzherbert and Mr. Strachey.

Upon the return of the other gentlemen, Mr. Strachey proposed to leave out the word *right* of fishing, and make it *liberty*. Mr. Fitzherbert said the word *right* was an obnoxious expression. Upon this I rose up and said, gentlemen, is there or can there be a clearer right?

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In former treaties, that of Utrecht, and that of Paris France and England have claimed the right, and used the word. When God Almighty made the Banks of Newfoundland at three hundred leagues distance from the people of America, and at six hundred leagues distance from those of France and England, did He not give as good a right to the former as to the latter? If Heaven, in the creation, gave a right, it is ours at least as much as yours. If occupation, use, and possession give a right, we have it as clearly as you. If war and blood and treasure give a right, ours is as good as yours.

We have been constantly fighting in Canada, Cape Breton, and Nova Scotia, for the defence of this fishery, and have expended beyond all proportion more than you; if then the right can not be denied, why should it not be acknowledged, and put out of dispute? Why should we leave room for illiterate fishermen to wrangle and chicane?

Mr. Fitzherbert said, the argument is in your favor. I must confess your reasons appear to be good; but as Mr. Oswald's instructions were such that he did not see how he could agree with us; and, for my part, I have not the honor and felicity to be a man of that weight and authority in my country that you, gentlemen, are in yours (this was very genteelly said); I have the accidental advantage of a little favor with the present minister, but I can not depend upon the influence of my own opinion, to reconcile a measure to my countrymen. We can consider ourselves as little more than pens in the hands of Government at home, and Mr. Oswald's instructions are *so* particular.

I replied to this: The time is not so pressing upon us but that we can wait till a courier goes to London with your representations upon this subject, and others that remain between us, and I think the ministers must be convinced.

Mr. Fitzherbert said, to send again to London, and have all laid loose before Parliament, was so uncertain a measure it was going to sea again.

Upon this, Dr. Franklin said, that if another messenger was to be sent to London he ought to carry something more respecting a compensation to sufferers in America.

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After hearing all this Mr. Fitzherbert, Mr. Oswald, and Mr. Strachey retired for some time, and returning, Mr. Fitzherbert said that, upon consulting together and weighing every thing as maturely as possible, Mr. Strachey and himself had determined to advise Mr. Oswald to strike with us, according to the terms we had proposed as our ultimatum, respecting the fishery and the loyalists. Accordingly, we all sat down, and read over the whole treaty and corrected it, and agreed to meet to-morrow at Mr. Oswald's house to sign and seal the treaties, which the secretaries were to copy fair in the mean time.

I forgot to mention that when we were upon the fishery, and Mr. Strachey and Mr. Fitzherbert were urging us to leave out the word *right*, and substitute *liberty*, I told them at last, in answer to their proposal to agree upon all other articles, and leave that of the fishery to be adjusted at the definitive treaty, I said I never could put my hand to any articles without satisfaction about the fishery; that Congress had, three or four years ago, when they did me the honor to give me a commission to make a treaty of commerce with Great Britain, given me a positive instruction not to make any such treaty

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without an article in the treaty of peace acknowledging our right to the fishery; that I was happy Mr. Laurens was now present, who, I believed, was in Congress at the time and must remember it. Mr. Laurens upon this said, with great firmness, that he was in the same case and could never give his voice for any articles without this. Mr. Jay spoke up, and said it could not be a peace; it would only be an insidious truce without it.

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NOVEMBER 30, 1782.

We met first at Mr. Jay's, then at Mr. Oswald's; examined and compared the treaties. * * *

From first to last I ever insisted upon it with the English gentlemen that the fisheries and the Mississippi, if America was not satisfied in those points, would be the sure and certain sources of a future war, showed them the indispensable necessity of both to our affairs, and that no treaty we could make which should be unsatisfactory to our people on those points could be observed; that the population near the Mississippi would be so rapid, and the necessities of the people for its navigation so pressing, that nothing could restrain them from going down, and if the force of arms should be necessary, it would not be wanting; that the fishery entered into our distilleries, our coasting trade, our trade with the southern States, with the West India islands, with the coast of Africa, and with every part of Europe in such a manner, and especially with England, that it could not be taken from us, or granted us stingily, without tearing and rending; that the other states had staples, we had none but fish, no other means of remittances to London, or paying those very debts they had insisted upon so seriously; that if we were forced off, at three leagues distance, we should smuggle eternally, that their men-of-war might have the glory of sinking now and then a fishing schooner, but this would not prevent a repetition of the crime, it would only inflame, and irritate, and enkindle a new war, that in seven years we should break through all restraints and conquer from them the Island of Newfoundland itself, and Nova Scotia too.

Mr. Fitzherbert always smiled, and said it was very extraordinary that the British ministry and we should see it in so different a light. That they meant the restriction in order to prevent disputes, and kill the seeds of war, and we should think it so certain a source of disputes, and so strong a seed of war; but that our reasons were such that he thought the probability on our side.

I have not time to minute the conversation about the sea-cow fishery, the whale fishery, the Magdalen Island, the Labrador coasts, and the coasts of Nova Scotia. It is sufficient to say, they were explained to the utmost of our knowledge and finally conceded.

I should have noted before the various deliberations between the English gentlemen and us, relative to the words "indefinite and exclusive" right, which the Count de Vergennes and M. Gerard had the precaution to insert in our treaty with France. I observed often to the English gentlemen, that, aiming at excluding us from fishing upon the north side of Newfoundland, it was natural for them to wish that the English would exclude us from the south side. This would be making both alike, and take away an odious distinction.

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French statesmen must see the tendency of our fishermen being treated kindly and hospitably, like friends by the English on their side of the island, and unkindly, inhospitably, and like enemies on the French side. I added, further, that it was my opinion, neither our treaty with the French nor any treaty or clause to the same purpose which the English could make, would be punctually observed. Fishermen, both from England and America, would smuggle, especially the Americans in the early part of the spring, before the Europeans could arrive. This, therefore, must be connived by the French, or odious measures must be recurred to by them or us to suppress it, and in either case it was easy to see what would be the effect upon the American mind. They, no doubt, therefore, wished the English to put themselves upon as odious a footing at least as they had done.

Dr. Franklin said that there was great weight in this observation, and the Englishmen showed plainly enough that they felt it.

I have not attempted in these notes to do justice to the arguments of my colleagues, all of whom were throughout the whole business, when they attended, very attentive and very able, especially Mr. Jay, to whom the French, if they knew as much of his negociations as they do of mine, would very justly give the title with which they have inconsiderately decorated me, that of "*Le Washington de la negociation*," a very flattering compliment, indeed, to which I have not a right, but sincerely think it belongs to Mr. Jay.

Mr. Adams to Mr. Livingston.

[Extract.]

November 6, 1782.

He [Mr. Oswald] has been compelled to acknowledge American independence because the Rockingham administration had resolved upon it, and Carleton and Digby's letter to General Washington had made known that resolution to the world; because the nation demanded that negotiations should be opened with the American ministers, *and they refused to speak or hear until their independence was acknowledged unequivocally and without conditions;* because Messrs. Fox and Burke had resigned their offices, pointedly, on account of the refusal of the king and my Lord Shelburne to make such an acknowledgment; and these eloquent senators were waiting only for the session of Parliament to attack his lordship on this point; it was, therefore, inevitable to acknowledge our independence, and no minister could have stood his ground without it.

Mr. Franklin to Mr. Livingston.

PASSY, *December 5th, 1782.*

* * * * * * *

The arrival of Mr. Jay, Mr. Adams, and Mr. Laurens, has relieved me from much anxiety, which must have continued, if I had been left to finish the treaty alone; and it has given me the more satisfaction, as I am sure the business has profited by their assistance.

Much of the summer has been taken up in objecting against the powers given by Great Britain, and in removing those objections, The not using any expressions, that might imply an acknowledgment

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of our independence, seems at first industriously to be avoided. But our refusing otherwise to treat, at length induced them to get over that difficulty, and then we came to the point of making propositions. Those made by Mr. Jay and me before the arrival of the other gentlemen, you will find in the paper A, which was sent by the British Plenipotentiary to London for the King's consideration. After some weeks, an under secretary, Mr. Strachey, arrived, with whom we had much contestation about the boundaries and other articles which he proposed and we settled; some of which he carried to London, and returned with the propositions, some adopted, others omitted or altered, and new ones added, which you will see in paper, B. We spent many days in disputing, and at length agreed on and signed the preliminaries, which you will see by this conveyance. The British Minister struggled hard for two points, that the favors granted to the royalists should be extended, and all our fishery contracted. We silenced them on the first, by threatening to produce an account of the mischief done by those people, and as to the second, when they told us they could not possibly agree to it as we requested it, and must refer it to the Ministry in London, we produced a new article to be referred at the same time, with a note of facts in support of it, which you have, C. Apparently it seemed, that to avoid the discussion of this, they suddenly changed their minds, dropped the design or recurring to London, and agreed to allow the fishery as demanded.

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B. FRANKLIN.

Extracts from Richard Oswald's Journal of Peace Negotiations.

Mr. Townshend to Mr. Oswald.[a]

WHITEHALL *1st September 1782.*

Rd. OSWALD, Esq.

Sir: I have received and laid before the King your Letters of the 17th 18th and 21st Instant together with the three Packets of Papers containing conversations with Doctor Franklin and Mr. Jay, and your observations thereupon enclosed in your letter of the 17th. And I am commanded to signify to you His Majesty's approbation of your conduct in communicating to the American Commissioners the 4th Article of your Instructions, which could not but convince them, that the negotiations for Peace, and the cession of Independence to the Thirteen United Colonies, were intended to be carried on and concluded with the Commissioners in Europe. Those Gentlemen having expressed their satisfaction concerning that article it is hoped they will not entertain a doubt of His Majesty's determination to exercise in the fullest extent the Powers with which the Act of Parliament hath invested him; by granting to America full, compleat and unconditional Independence, in the most explicit manner as an Article of Treaty. But you are at the same time to represent to them, if necessary, that the King is not enabled by that Act to cede Independence, unconnected with a Truce or Treaty of Peace; and that therefore the Cession of Independence cannot stand as a single, separate Article,

[a] This paper and those following down to and inclusive of Mr. Oswald's letter to Mr. Townshend, dated November 30, 1782, are taken from his Journal.

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to be ratified by itself; but may be (and His Majesty is willing shall be) the first Article of the Treaty, unconditionally of any compensation, or equivalent to be thereafter required in the said Treaty. You will observe, that the very Article of Your Instructions referred to, is conformable to this Idea, as it is expressly mentioned to be offered by His Majesty as the Price of Peace; and that Independence, declared and ratified absolutely and irrevocably, and not depending upon the event of concluding an entire Treaty, might in the end prove a Treaty, for the purpose of Independence alone, and not for a Peace or Truce; to which objects all the Powers of the Act refer.

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T. TOWNSHEND.

Mr. Oswald to Mr. Townshend.

PARIS *10th September 1782*

R^{t}. Hon^{ble} T. TOWNSHEND

SIR; By the courier Rauspach who arrived here on the 3^{d}. I had the honor of your Letter of the 1st Instant. Upon receipt of it I went out to Doctor Franklin; he askt me if I had any directions relative to the point upon which the last courier had been dispatched to England, regarding a previous Declaration of their Independence before a commencement of Treaty. I told him I had got Instructions upon that head, which although they empowered me only to make such Declaration as in the first Article of the Treaty, yet I hoped upon a due consideration of the matter they would appear to be fully satisfying. He said if there was no particular objection he could wish to have a copy of that Instruction. I told him it should be sent to him. He was ill at the time; and as he could not come to town, he gave me a Letter to M^{r}. Jay, desiring him to come out to him in the evening. I called on that Gentleman, when, informing him of the manner in which I was authorized to treat, he said he could not proceed unless their Independence was previously so acknowledged, as to be entirely distinct and unconnected with Treaty. In the course of this conversation, and the Day thereafter, a good deal was said of the same nature with what had passed on former occasions relative to this subject, as advised in my Letters of last month.

Two days ago Doctor Franklin sent to me, desiring a copy of the Instruction which I had promised as abovementioned. I copied out the first part of your Letter of the 1st Instant leaving out some immaterial Words, and sent it inclosed in a Letter from myself, of both of which Papers there is a duplicate under this cover.

Since then I have seen M^{r}. Jay frequently and have used every argument in my Power to get him over his objections to treating without a Separate and absolute acknowledgment of Independence. And for that purpose I found it necessary (although unwillingly) yet as of my own private opinion, to tell him that there might be a doubt whether the Powers in the Act of Parliament went so far, as to allow of making that Grant otherwise than as in the course of a Treaty for Peace; which as you are pleased to observe, was the sole object of the Act.

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I said moreover, That if they persisted in this Demand, there could be nothing done until the Meeting of Parliament, and perhaps for some considerable time thereafter. That certain Articles had been already agreed upon, and if We went on and settled the Treaty on that footing, with Independence standing as the first Article of it, we might give opportunity to the Foreign Treaties to be going on at the same time; so as, for a conclusion of a general Peace, there might be nothing wanting, at the meeting of Parliament, but a confirmation of the first Article, in case it should be then thought necessary; which I imagined would not be the case.

In answer to this Mr. Jay said, there could be no judgment formed as to when the Foreign Treaties would end, and that until that with France was concluded, they of the Colonies could not give us either Peace or Truce. Nor could they presume so much as to give an opinion of the Demands of France, whatever they might be; since until their Independence was acknowledged, absolute and unconnected with Treaty they were as nobody; and as no People. And France could tell them so if they were to pretend to interfere; having failed to acquire that character, for which they had jointly contended. And therefore they must go on with France until England gave them satisfaction on the point in question. That to this they were bound by Treaty; which their constituents were determined honestyly and faithfully to fullfil. That being the case it could not be expected that they as Servants, could take it upon them to dispense with the said acknowledgment.

That by looking over the Sundry Resolves of their Congress I might see that that assembly did not mean to seek for their character in any Article of any Treaty; and for that purpose Mr. Jay recommended to me the perusal of sundry parts of their proceedings as they stood in the Journals of the Congress which he would mark out for me; and if I would extract and send them to England, they would serve at least as an excuse for them as Commissioners, in thinking themselves bound to abide by their demand. Mr. Jay accordingly gave me four volumes of their Journals, with sundry passages markt out as above. Mr. Whiteford has been so good to copy them out; and they are enclosed.

Mr. Jay was kind enough also to read to me an Article of their Instructions to the same purpose, and likewise containing paragraphs of two late Letters from his Colleague, Mr. John Adams in Holland, expressly declaring that they ought not to proceed in a Treaty with England, untill their Independence is acknowledged.

In the course of these conversations it may be supposed this Gentleman took frequent opportunities to refer to the offer by Mr. Grenville, to acknowledge their Independence in the first Instance, which they always considered to be absolute, and unconnected in every shape with a Treaty; and could not conceive the reason why that which we were willing to give them in May should be refused in August. If it proceeded from there being less confidence on our side, on this occasion, the change ought to make them still more cautious than usual on their part. Mr. Jay also insisted on that offer of Mr. Grenville, as a proof, that the same thing being denied now, could not proceed from any supposition of restraint in the enabling Act.

To avoid being tedious I forbear repeating a great many more things to the same purpose which passed in those conversations with

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Mr. Jay. Mr. Franklin being so much out of order, I could not think of disturbing him by frequent visits to Passy, and therefore continued taking proper opportunities of talking to Mr. Jay; and the more readily that by any Judgment I could form of his real Intentions, I could not possibly doubt of their pointing directly at a speedy conclusion of the War; and also leaning as favorably to the side of England, as might be consistent with the Duties of the Trust he has undertaken.

To convince me that nothing less than this stood in the way of agreeing to my request of accommodating this difficulty in some shape or other, he told me at last if Doctor Franklin would consent, he was willing in place of an express and previous acknowledgment of Independence to accept of a constructive Denomination of character, to be introduced in the Preamble of the Treaty, by only describing their Constituents as the Thirteen United States of America. Upon my appearing to listen to this, and to consent to the substitution, he said, but you have no authority in your Commission to treat with Us under that Denomination. For the Sundry Descriptions of the Parties to be treated with, as they stand in that Commission, will not bear such application to the character We are directed to claim and abide by, as to support and authenticate any Act of your subscription to that purpose and particularly to the substitution now proposed. There are such a variety of Denominations in that Commission, that it may be applied to the People you see walking in the Streets, as well as to Us.

When, in reply, I imputed that variety to the official stile of such like Papers, Mr. Jay said it might be so, but they must not rest a Question of that importance upon any such explanation. And since they were willing to accept of this, in place of an express Declaration of Independence, the least they could expect was, that it should appear to be warranted by an explicit authority in that Commission.

I then askt if, instead of States, it would not do to say Provinces; or States or Provinces.—Mr. Jay said neither of these would answer.

I then begged the favor of him to give me in writing, some sketch of the alteration he would have to be made in the Commission. He readily did so in a minute which is inclosed; to be more largely explained, if necessary, when the Commission comes to be made out. He also said that this new Commission must be under the Great Seal as the other was.

Before I quitted this subject I tried one other expedient for saving time and avoiding the necessity of a new Commission; by reading to Mr. Jay the second Article of my Instructions, which empowers me to treat with them, as commissioned by Constituents of any Denomination whatever. And told him that altho' this Power meant only to apply to Character as assumed by them, and not to an admission by me without exception; yet in the present described character of States, I would not only admit their assuming that appellation, in the Preamble of the Treaty, but I would venture to repeat it, so as it should appear to be an acknowledgment on my part. In doing so I could not suppose any hazard of objection at home, considering what had passed on a former occasion above mentioned, together with the said Power in my Instructions. But Mr. Jay said they could admit of no authority but what was explicitly conveyed to me by a Commission in the usual form. And therefore to put an end to this difficulty, there was an absolute necessity for a new Commission.

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He at the same time told me that to satisfy His Majesty's Ministers of the propriety of their Conduct, as persons under Trust, He had sketched out a Letter to me, which I might send home if I pleased. He read the scroll of it to me, and promised to write it out fair, and give it me before the departure of a Courier.

* * * * * * *

RICHARD OSWALD.

[Annex.]

Sketch of an alteration proposed by Mr. Jay to be made in His Majesty's Commission, for treating with the Commissioners of the Colonies.

Received about eight days ago.

10th. Sepr. 1782

A Commission (in the usual form) to Richard Oswald Esqr. to treat of Peace or Truce with Commissioners or Persons vested with equal Powers by and on the part of the Thirteen United States of America, would remove the objection to which the present Commission is liable, and thereby render it proper for the American Commissioners to proceed to treat with him on the subject of Preliminaries. [Note by Mr. Oswald attached to foregoing sketch.]

11th August. In case the proposed alteration in the Commission should be agreed on, I humbly submit whether it will not be proper in the description of the American Parties to be treated with to leave out a great part or all that variety of Denominations of Colonies, Bodies Corporate, Persons &c. as they now stand in the Commission, and to confine the description to just what is necessary, as in the Sketch abovementioned, or with such farther addition only as may not give offence to the Commissioners. I have not said anything to Mr. Jay respecting the words of the abovementioned Memorandum having forgot to do so, but I think the Words—or Commissioners would stand properly after or before the Word Persons in the above minutes.

Mr. Townshend to Mr. Oswald.

WHITEHALL *20th. September 1782*

Rd. Oswald Esqr.

Sir, I received on Saturday last your Packets of the 10th and 11th of this month.

A meeting of the King's Confidential Servants was held as soon as possible to consider the contents of them; and it was at once agreed to make the alteration in the Commission proposed to you by Mr. Jay. I trust that the readiness with which this proposal was accepted, will be considered as an ample Testimony of the openness and sincerity with which the Government of this Country is disposed to treat with the Americans.

The Commission is passing with as much dispatch as the forms of office will allow, but I thought it material that no delay should happen in giving you notice of the determination of His Majesty's Council upon this subject.

I am &c.

T. TOWNSHEND.

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Mr. Townshend to Mr. Oswald.

WHITEHALL *24th. September 1782*

R^d Osward Esq^r.

Sir, I now send you the Commission, which has met with no delay more than was absolutely necessary for the forms through which it was to pass.

I hope that the frankness with which we deal will meet with a suitable return.

I have ordered the office to be searched for all Papers which can give any Information concerning the Boundaries which you mention in your Letter of the 11th of this month; but it has not been in my power to have so exact a state of that Matter, made out, as may be necessary for your direction in your Negotiation.

I think it necessary to inform you that I received yesterday Dispatches from Sir Guy Carleton, and I enclose to you a copy of his Letter to General Washington on the subject of M^r. Grenville's Proposal of Independence in the first instance, and not as a conditional Article in the General Treaty, and also a Copy of a Paper printed by the Congress in consequence of General Washington's communication of that Letter to him.

* * * * * * *

I am &c.

T. TOWNSHEND.

[Annex.]

R OSWALD Esq^r. } George R.
Commission }

Our Will and Pleasure is and We do hereby authorize and command you forthwith to prepare a Bill for our Signature to pass our Great Seal of Great Britain in the words or to the following effect viz:

George the Third by the Grace of God, King of Great Britain, France and Ireland, Defender of the Faith &c. To Our Trusty and Wellbeloved Richard Oswald of the City of London Esquire, Greeting.

Whereas by Virtue of an Act passed in the last Session of Parliament intituled "An Act to enable His Majesty to conclude a Peace or Truce with certain Colonies in North America therein mentioned," it is recited, "that it is essential to the Interest, Welfare and Prosperity of Great Britain and the Colonies or Plantations of New Hampshire, Massachusetts Bay, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, the Lower Counties on Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia in North America, that Peace, Intercourse, Trade and Commerce should be restored between them"—Therefore, and for a full manifestation of Our earnest wish and Desire, and of that of our Parliament, to put an end to the Calamities of War, it is enacted, that it might and should be lawfull for Us to treat, consult of, agree and conclude with any Commissioner or Commissioners named or to be named by the said Colonies or Plantations, or any of them respectively, or with any Body or Bodies, Corporate or Politic, or any Assembly or Assemblies, or description of Men, or any Person or Persons whatsoever a Peace or a Truce with the said Colonies or

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Plantations, or any of them or any part or parts thereof, any Law, Act or Acts of Parliament, matter or Thing to the contrary in any wise notwithstanding.

Now know ye that We reposing a special Trust in your Loyalty Wisdom, Diligence and Circumspection in the management of the Affairs to be hereby committed to your charge, have nominated and appointed, constituted and assigned, and by these Presents do nominate, and appoint, constitute and assign you the said Richard Oswald to be our Commissioner in that behalf, to use and exercise all and every the Powers and authorities hereby entrusted and committed to you the said Richard Oswald, and to do perform and execute all other matters and Things hereby enjoined and committed to your care during Our Will and Pleasure, and no longer, according to the Tenor of these Our Letters Patent; and it is Our Royal Will and Pleasure, and we do hereby authorise, empower and require you, the said Richard Oswald, to treat consult of and conclude with any Commissioners or Persons vested with equal Powers, by and on the part of the Thirteen United States of America viz: New Hampshire, Massachusetts Bay, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, the three lower counties on Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia in North America, a Peace or a Truce with the said United States, any Law, Act or Acts of Parliament, matter or thing to the contrary in any wise notwithstanding.

And its Our further Will and Pleasure, that every regulation, Provision, Matter, or Thing, which shall have been agreed upon between you, the said Richard Oswald, and such Commissioners or Persons as aforesaid, with whom you shall have judged meet and sufficient to enter into such agreement, shall be fully and distinctly set forth in writing, and authenticated by your Hand and Seal on one side, and by the Hands and Seals of such Commissioners or Persons on the other, and such Instrument so authenticated shall be by you transmitted to Us, through one of our Principal Secretaries of State.

And it is Our further Will and Pleasure, that you, the said Richard Oswald, shall promise and engage for Us and in our Royal Name and Word, that every Regulation, Provision, Matter or Thing, which may be agreed to or concluded by you, our said Commissioner shall be ratified and confirmed by Us, in the fullest manner and Extent, and that We will not suffer them to be violated or counteracted, either in whole or in part by any person whatsoever.

And we do hereby require and Command all our Officers, Civil and Military and all other our loving subjects whatsoever, to be aiding and assisting unto you the said Richard Oswald in the Execution of this Our Commission, and of the Powers and Authorities herein contained. Provided always, and We do hereby declare and ordain that the several Officers, Powers andAuthorities hereby granted shall cease, determine and become utterly Null and Void on the first day of July which shall be in the Year of Our Lord 1783, although we shall not otherwise, in the meantime, have revoked and determined the same.

And Whereas in and by our Commission and Letters Patent under our Great Seal of Great Britain, bearing date the seventh day of August last We nominated and appointed, constituted and assigned him the said Richard Oswald to be our Commissioner to treat, con-

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sult of, agree and conclude with any Commissioner or Commissioners named or to be named by certain Colonies or Plantations in America, therein specified a Peace or Truce with the said Colonies or Plantations, Our Will and Pleasure is, that you insert a Clause in the said Bill revoking and determining our said Commission and Letters Patent and all and every Power, Article and Thing therein contained. And for so doing this shall be your Warrant. Given at Our Court at St. James's the 19th day of September 1782; in the 22nd year of our Reign.

By His Majesty's Command

To our Attorney or Solicitor General } T. TOWNSHEND.

Mr. Oswald to Mr. T. Townshend.

PARIS, *November 30, 1782.*

SIR: I take this opportunity of Mr. Strachey to acknowledge the honor of your letters of the 22d and 23d (19th and 22d) instant and to advise that we have at last come to an agreement with the American commissioners as to the terms of the treaty.

They are not exactly what were proposed by the draft which Mr. Strachey brought over with him, but are the best we could possibly obtain of them.

If we had not given way in the article of the fishery, we should have had no treaty at all. Mr. Adams having declared that he would never put his hand to any treaty, if the restraints regarding the three leagues and fifteen leagues were not dispensed with, as well as that denying his countrymen the privilege of drying fish on the unsettled parts of Nova Scotia.

Mr. Fitzherbert and Mr. Strachey finding this, and there being a discretionary power in Mr. Strachey's instructions regarding the whole of this article, as well in extent as manner, they thought it advisable to avail themselves of it rather than send again to London on this critical occasion, for farther instructions. Which although in the most certain prospect of obtaining assent to such dispensation might have been of bad consequence, not only in the loss of so much time, but in leaving the commissioners in such humor, as in the interim, to have suggested some new demands under the head of one or more of the other articles, which might have been of worse consequence than that of giving up these restraints of fishery. One specimen of which we had yesterday, while sitting with them and under hesitation on this subject, when one of those gentlemen, pulling a paper out of his pocket, proposed that his majesty should recommend to his parliament, to make provision for the payment of certain effects which had been seized by order of his generals and entirely out of the line of the consequences of military irregularities, and such as they could bring undoubted proofs of. And which he said ought to be paid upon the same principles of justice, as was urged in favor of the recovery of debts. On these and other accounts, and being in a manner certain that without an indulgence in this article of fishery, there would have been no treaty with America, the above-mentioned gentlemen thought it best to close with the commissioners by admit-

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ting this article in the way they proposed. In which they not only had my concurrence, but I own I used the freedom to encourage and press them to give their consent; being of opinion that I would be under no difficulty in showing that the grant was not of that importance as to be put in comparison with the consequences of splitting with America at this time. Among other things it occurred to me that if our caution in this particular regarding our marine, and an apprehension of its being abridged by this interference of the Americans to a greater extent in this trade, we might come to suffer much more by what the commissioners insinuated and indeed threatened in case of a refusal, which was to pass an act of navigation, by which, after a certain time all the ports of America should be shut against English ships in so far as the exportation of their produce should be concerned. And in the other view of the profits of the fishing trade, and our being deprived of such part of it as the Americans would gain by this admission, I was of opinion that in leaving the fishing sea ports in the west of England, I would not have far to go inland, to be satisfied that the loss by continuing the dispute some time longer with the Americans, or even laying the foundation of a national grudge, would, ten times over, counterbalance the amount of the said loss; even supposing that the conditions of those restraints could be enforced; by keeping the Americans to their proper distances; which I am of opinion would be difficult if not doubtful, or if attempted by our men-of-war on that station, might be the means of bringing on quarrels of states, instead of being useful in preventing quarrels of fishermen, as one of the motives insisted on in justification of this refusal.

Some time after our giving up this article one of those gentlemen came over to our lodgings, and told us that if in this particular we had made any stretch beyond the limits of our instructions, they would in return do the same by theirs; and instead of confining the payment of debts to what preceded the year 1775, they would make all recoverable since that period.

I have not to trouble you farther on the subject, as Mr. Strachey can so well inform you of every particular of the progress of it. I will only beg leave, in so far as I was personally concerned, to express my acknowledgment, and the sincere satisfaction I felt upon this second appointment to that charge which could not fail in relieving my mind of the anxious concern I must have naturally experienced upon the occasion. I had also the additional pleasure to promise upon the public receiving every benefit in the conclusion of the business which could be expected from his ability and indefatigable attention and assiduity, as to which any farther information on my part would be ill placed and unnecessary, so that I have only to subscribe myself, sir, &c.

RICHARD OSWALD.

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PERTAINING TO THE UNRATIFIED TREATY OF 1806.

Extract from despatch of Messrs. Monroe and Pinkney to Mr. Madison, in relation to the unratified treaty of December 31, 1806.

LONDON, *April 25, 1807.*

SIR: We had the honor to inform you, in our letter of the 22d instant, that the British commissioners having proposed to us to endeavor to adjust the terms of a supplemental convention relative to boundary, to a trade by sea between the United States and British northern colonies, and to the subjects reserved for future explanation by the second article of our treaty, we had resumed our conferences with them, and had made considerable progress in digesting the plan of such a convention, when the business was interrupted by an entire change of the King's ministers. It is the purpose of this despatch concisely to explain that negotiation and its objects.

After many interviews and much discussion, the British commissioners at length presented to us the project of which a copy is now transmitted, differing in many essential particulars from that which had been originally offered on our part.

* * * * * * *

To the fifth article, regulating our boundary in the northwest, which has encountered much zealous opposition here, even in the form suggested by the British commissioners, from the prejudices, supposed interests, and mistaken views of many persons, an explanation of some of which will be found in an idle paper written by Lord Selkirk, (of which a copy is enclosed,) we finally objected, that the division line between our respective territories in that quarter ought to be drawn from the most northwestern point of the Lake of the Woods due north or south until it shall intersect the parallel of forty-nine degrees, and from the point of such intersection due west along and with that parallel. This was agreed to by the British Commissioners.

We objected, also, to the terms, defining the extension of the west line, viz: "as far as the territories of the United States extend in that quarter." It appeared to us that, by these words, a great portion of the subject was in danger of being set at large; that the provision would, perhaps, do no more than establish between the parties the commencement of the line, and might, of course, leave it open to Great Britain to found a claim hereafter to any part of the tract of country to the westward of that commencement, upon the notions of occupancy or conquest, which you will find stated by Lord Selkirk in the paper above mentioned, or upon some future purchase from Spain, as intimated by others. We therefore proposed to omit the words in question altogether, which the concluding proviso appeared to render wholly unnecessary, even upon the ideas of the British commissioners. This was not agreed to; but it was said there would be

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no objection to give to this part of the description a character of reciprocity, so as to make it read "as far as their said respective territories extend in that quarter." A copy is enclosed of our plan of a fifth article, as also of the same article, with the description above quoted, merely made reciprocal.

It is proper to observe in this place, that the project of the British commissioners contemplates what, of course, had not entered into our plan, a permanent concession, on our part, of access, through our territories in the northwestern quarter, to the River Mississippi, for the purpose of enabling British subjects to enjoy the navigation of that river, as secured to them by the treaty of peace and the treaty of 1794, and the like access to the rivers falling into the Mississippi from the westward. The desired concession, however, amounts simply to a right of passage, and is claimed, not only as an equivalent for such a permanent adjustment of boundary as is here thought, or affected to be thought, highly advantageous to us, and injurious to Great Britain, but (as regards access to the Mississippi) upon the idea, among others, that the treaty of peace, which secures to Great Britain the free navigation of that river, appears to have looked to it, in common with the treaty of 1763, as overreaching our northern limit, and consequently as being accessible to the British in the territory of Hudson's Bay. It is probable that this demand, so far as respects the waters falling into the Mississippi from the westward, would not be persisted in, if no other difficulty should present itself.

* * * * * * *

We have the honor to be, &c.

JAS. MONROE.
WM. PINKNEY.

[Enclosure.]

Additional and explanatory articles, signed the —— day of ——, 1807, to be added to the treaty of amity, commerce, and navigation between His Britannic Majesty and the United States of America, signed at London, the 31st day of December, 1806.

Whereas, by the second article of the treaty of amity, commerce, and navigation, concluded at London, on the 31st day of December, 1806, between His Majesty and the United States of America, it is agreed that the several articles of the treaty of 1794, "which have not expired, nor as yet had their full operation and effect, shall be confirmed in their best form and in their full tenor; and that the contracting parties will also, from time to time, enter into friendly explanations on the subject of the said articles, for the purpose of removing all such doubts as may arise, or have arisen, as to the true import of the same, as well as for the purpose of rendering the said articles more conformable to their mutual wishes and convenience;" and it being the sincere desire of His Britannic Majesty and of the United States that certain points should be so explained as to promote mutual satisfaction and friendship; and, for this purpose, the respective plenipotentiaries who concluded and signed the aforesaid treaty of the 31st of December, 1806, having already exchanged their full powers, have, in virtue of the same, entered into these additional and explanatory articles.

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Art. 5. It is agreed that a line drawn due west from the Lake of the Woods along the forty-ninth parallel of north latitude shall be the *line of demarcation* [division line] between His Majesty's territories and those of the United States to the westward of the said lake, *as far as the territories of the United States extend in that quarter;* and that the said line shall, *to that extent*, form the southern boundary of His Majesty's said territories, and the northern boundary of the said territories of the United States; provided that nothing in the present article shall be construed to extend to the northwest coast of America, or to the territories belonging to or claimed by either party, on the continent of America, to the westward of the Stony mountains.

Art. 6. It is agreed by the United States that His Majesty's subjects shall have, at all times, free access from His Majesty's aforesaid territories by land or inland navigation into the aforesaid territories of the United States to the river Mississippi, with the goods and effects of His Majesty's said subjects, in order to enjoy the benefit of the navigation of that river, as secured to them by the treaty of peace between His Majesty and the United States, and also by the third article of the treaty of amity, commerce, and navigation of one thousand seven hundred and ninety-four. And it is further agreed that His Majesty's subjects shall, in like manner, and at all times, have free access to all the waters and rivers falling into the western side of the river Mississippi, and to the navigation of the said river.

* * * * * * *

Art. 9, Lastly. This treaty, when the same shall have been ratified by His Majesty and the President of the United States, by and with the advice of their Senate, and the respective ratifications mutually exchanged, shall be binding and obligatory upon His Majesty and upon the said States, and shall be by them respectively executed and observed with punctuality and the most sincere regard to good faith; and it is agreed that the first six articles of this treaty shall be permanent, and that the seventh and eighth articles shall be limited in their duration to ten years, to be computed from the day on which the ratification of the treaty of amity, commerce, and navigation, signed at London on the 31st of December last, shall have been exchanged.

In faith whereof, &c.

ARTICLE 5.

As proposed by the American commissioners.

It is agreed that a line drawn due north or south (as the case may require) from the most northwestern point of the Lake of the Woods, until it shall intersect the forty-ninth parallel of north latitude, and from the point of such intersection, due west, along and with the said parallel, shall be the dividing line between his Majesty's territories and those of the United States to the westward of the said lake; and that the said line, to and along and with the said parallel, shall form the southern boundary of His Majesty's said territories and the northern boundary of the said territories of the United

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States: provided that nothing in the present article shall be construed to extend to the northwest coast of America, or to the territories belonging to or claimed by either party on the continent of America to the westward of the Stony mountains.

ARTICLE 5.

As the British commissioners would agree to make it.

It is agreed that a line drawn due north or south (as the case may require) from the most northwestern point of the Lake of the Woods, until it shall intersect the forty-ninth parallel of north latitude, and from the point of such intersection, due west, along and with the said parallel, shall be the dividing line between His Majesty's territories and those of the United States to the westward of the said lake, as far as their said respective territories extend in that quarter; and that the said line shall, to that extent, form the southern boundary of His Majesty's said territories and the northern boundary of the said territories of the United States: provided that nothing in the present article shall be construed to extend to the northwest coast of America, or to the territories belonging to or claimed by either party on the continent of America to the westward of the Stony mountains.

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PERTAINING TO THE NEGOTIATION OF THE TREATY OF GHENT.

Mr. Monroe to the Envoys Extraordinary and Ministers Plenipotentiary of the United States.

DEPARTMENT OF STATE, *June 25, 1814.*

GENTLEMEN: No communication has been received from the joint mission which was appointed to meet the commissioners of the British Government at Gottenburg. A letter from Mr. Bayard at Amsterdam, of the 18th of March, was the last from either of our commissioners. It was inferred from that letter, and other communications, that Mr. Bayard, Mr. Gallatin, and Mr. Adams, would be in Gottenburg; and it has been understood from other sources that Mr. Clay and Mr. Russell had arrived there about the 15th of April. It is, therefore, expected that a meeting will have taken place in May, and that we shall soon be made acquainted with your sentiments of the probable result of the negotiation.

It is impossible, with the lights which have reached us, to ascertain the present disposition of the British Government towards an accommodation with the United States. We think it probable that the late events in France may have had a tendency to increase its pretensions.

At war with Great Britain, and injured by France, the United States have sustained the attitude founded on those relations. No reliance was placed on the good offices of France in bringing the war with Great Britain to a satisfactory conclusion. Looking steadily to an honorable peace, and the ultimate attainment of justice from both Powers, the President has endeavored, by a consistent and honorable policy, to take advantage of every circumstance that might promote that result. He, nevertheless, knew that France held a place in the political system of Europe and of the world, which, as a check on England, could not fail to be useful to us. What effect the late events may have had, in these respects, is the important circumstance of which you are, doubtless, better informed than we can be.

The President accepted the mediation of Russia from a respect for the character of the Emperor, and a belief that our cause, in all the points in controversy, would gain strength by being made known to him. On the same principle he preferred (in accepting the British overture to treat independently of the Russian mediation) to open the negotiation on the continent rather than at London.

It was inferred from the general policy of Russia, and the friendly sentiments and interposition of the Emperor, that a respect for both would have much influence with the British cabinet in promoting a pacific policy towards us. The manner, however, in which it is understood that a general pacification is taking place; the influence Great Britain may have in modifying the arrangements involved in it; the

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resources she may be able to employ exclusively against the United States; and the uncertainty of the precise course which Russia may pursue in relation to the war between the United States and Great Britain, naturally claim attention, and raise the important question in reference to the subject of impressment, on which it is presumed your negotiations will essentially turn, whether your powers ought not to be enlarged so as to enable you to give to those circumstances all the weight to which they may be entitled. On full consideration, it has been decided, that, in case no stipulation can be obtained from the British Government at this moment, when its pretensions may have been much heightened by recent events, and the state of Europe be most favorable to them, either relinquishing the claim to impress from American vessels, or discontinuing the practice, even in consideration of the proposed exclusion from them of British seamen, you may concur in an article stipulating that the subject of impressment, together with that of commerce between the two countries, be referred to a separate negotiation, to be undertaken, without delay, at such place as you may be able to agree on, preferring this city if to be obtained. I annex at the close of this letter a project of an article expressing more distinctly the idea which it is intended to communicate, not meaning thereby to restrain you in any respect as to the form. Commerce and seamen, the objects of impressment, may, with great propriety, be arranged in the same instrument. By stipulating that commissioners shall forthwith be appointed for the purpose, and that all rights on this subject, shall, in the mean time, be reserved, the faith of the British Government will be pledged to a fair experiment in an amicable mode, and the honor and rights of the United States secured. The United States having resisted by war the practice of impressment, and continued the war until that practice had ceased by a peace in Europe, their object has been essentially obtained for the present. It may reasonably be expected that the arrangement contemplated and provided for, will take effect before a new war in Europe shall furnish an occasion for reviving the practice. Should this arrangement, however, fail, and the practice be again revived, the United States will be again at liberty to repel it by war, and that they will do so cannot be doubted; for after the proof which they have already given of a firm resistance in that mode, persevered in until the practice had ceased, under circumstances the most unfavorable, it cannot be presumed that the practice will ever be tolerated again. Certain it is, that every day will render it more ineligible in Great Britain to make the attempt.

In contemplating the appointment of commissioners, to be made after the ratification of the present treaty, to negotiate and conclude a treaty to regulate commerce, and provide against impressment, it is meant only to show the extent to which you may go, in a spirit of accommodation, if necessary. Should the British Government be willing to take the subject up immediately with you, it would be much preferred, in which case the proposed article would, of course, be adapted to the purpose.

Information has been received, from a quarter deserving attention, that the late events in France have produced such an effect on the British Government as to make it probable that a demand will be made at Gottenburg to surrender our right to the fisheries; to abandon

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all trade beyond the cape of Good Hope; and to cede Louisiana to Spain. We cannot believe that such a demand will be made. Should it be, you will of course treat it as it deserves. These rights must not be brought into discussion. If insisted on, your negotiations will cease.

I have the honor to be, with great respect, gentlemen, your most obedient servant,

JAS. MONROE.

[Inclosure.]

Whereas, by the peace in Europe, the essential causes of the war between the United States and Great Britain, and particularly the practice of impressment, have ceased, and a sincere desire exists to arrange, in a manner satisfactory to both parties, all questions concerning seamen, and it is also their desire and intention to arrange, in a like satisfactory manner, the commerce between the two countries, it is therefore agreed that commissioners shall forthwith be appointed on each side, to meet at ———, with full power to negotiate and conclude a treaty, as soon as it may be practicable, for the arrangement of those important interests. It is, nevertheless, understood that, until such treaty be formed, each party shall retain all its rights, and that all American citizens who have been impressed into the British service shall be forthwith discharged.

Protocol of conference, August 8, 1814.

The British and American commissioners having met, their full powers were respectively produced, which were found satisfactory, and copies thereof were exchanged.

The British commissioners stated the following subjects, as those upon which it appeared to them that the discussions between themselves and the American commissioners would be likely to turn:

1st. The forcible seizure of mariners from on board merchant ships on the high seas, and, in connexion with it, the right of the King of Great Britain to the allegiance of all his native subjects.

2d. That the peace be extended to the Indian allies of Great Britain, and that the boundary of their territory be definitively marked out as a permanent barrier between the dominions of Great Britain and the United States. An arrangement on this subject to be a *sine qua non* of a treaty of peace.

3d. A revision of the boundary line between the British and American territories, with the view to prevent future uncertainty and dispute.

The British commissioners requested information whether the American commissioners were instructed to enter into negotiation on the above points. But before they desired any answer, they felt it right to communicate the intentions of their Government as to the North American fisheries, viz: that the British Government did not intend to grant to the United States gratuitously the privileges formerly granted by treaty to them of fishing within the limits of the British sovereignty, and of using the shores of the British territories for purposes connected with the fisheries.

August 9.

The meeting being adjourned to the 9th August, the commissioners met again on that day.

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The American commissioners at this meeting stated that, upon the first and third points proposed by the British commissioners, they were provided with instructions from their Government; and that the second and fourth of these points were not provided for in their instructions. That, in relation to an Indian pacification, they knew that the Government of the United States had appointed commissioners to treat of peace with the Indians; and that it was not improbable peace had been made with them.

The American commissioners presented, as further subjects considered by the Government of the United States as suitable for discussion—

1st. A definition of blockade, and as far as may be agreed, of other neutral and belligerent rights.

2d. Certain claims of indemnity to individuals for captures and seizures preceding and subsequent to the war.

3d. They further stated that there were various other points to which their instructions extended, which might with propriety be objects of discussion, either in the negotiation of the peace, or in that of a treaty of commerce, which, in the case of a propitious termination of the present conferences, they were likewise authorized to conclude. That, for the purpose of facilitating the first and most essential object of peace, they had discarded every subject which was not considered as peculiarly connected with that, and presented only those points which appeared to be immediately relevant to this negotiation.

The American commissioners expressed their wish to receive from the British commissioners a statement of the views and objects of Great Britain upon all the points, and their willingness to discuss them all.

They, the American commissioners, were asked whether if those of Great Britain should enter further upon this discussion, particularly respecting the Indian boundary, the American commissioners could expect that it would terminate by some provisional arrangement which they could conclude, subject to the ratification of their Government.

They answered that, as any arrangement to which they could agree upon the subject must be without specific authority from their Government, it was not possible for them, previous to the discussion, to decide whether any article on the subject could be formed which would be mutually satisfactory, and to which they should think themselves, under their discretionary powers, justified in acceding.

The meeting was adjourned.

True copy:

CHRISTOPHER HUGHES, Jun.,
Secretary of Legation.

The American to the British plenipotentiaries.

GHENT, *October 13, 1814.*

The undersigned have the honor to acknowledge the receipt of the note of the plenipotentiaries of His Britannic Majesty, dated on the 8th instant.

Satisfied of the impossibility of persuading the world that the Government of the United States was liable to any well grounded imputation of a spirit of conquest, or of injustice towards other

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nations, the undersigned, in affording explanations on several of the topics adverted to by the British plenipotentiaries during this negotiation, were actuated by the sole motive of removing erroneous impressions.

* * * * * * *

Considering the present state of the negotiation, the undersigned will abstain, at this time, from adducing any evidence or remarks upon the influence which has been exerted over the Indian tribes inhabiting the territories of the United States, and the nature of those excitements which have been employed by British traders and agents.

The arguments and facts already brought forward by the undersigned respecting the political condition of those tribes render it unnecessary for them to make many observations on those of the British plenipotentiaries on that subject. The treaties of 1763, and of 1783, were those principally alluded to by the undersigned to illustrate the practice of Great Britain. She did not admit in the first, nor require in the last, any stipulations respecting the Indians, who, in one case, had been her enemies, and in the other her allies, and who, in both instances, fell by the peace within the dominions of that Power against whom they had been engaged in the preceding war.

The negotiation of 1761, was quoted for the purpose of proving what appears to be fully established by the answer of England to the ultimatum of France, delivered on the 1st of September of that year, that His Britannic Majesty would not renounce his right of protection over the Indian nations reputed to be within his dominions, that is to say, between the British settlements and the Mississippi. Mr. Pitt's letter, cited by the British plenipotentiaries, far from contradicting that position, goes still further. It states that "the fixation of the new limits to Canada, as proposed by France, is intended to shorten the extent of Canada, which was to be ceded to England, and to lengthen the boundaries of Louisiana, which France was to keep, and in the view to establish what must be not admitted, namely, that all which is not Canada is Louisiana, whereby all the intermediate nations and countries, the true barrier to each province, would be given up to France." This is precisely the principle uniformly supported by the undersigned, to wit, that the recognition of a boundary gives up to the nation in whose behalf it is made, all the Indian tribes and countries within that boundary. It was on this principle that the undersigned have confidently relied on the treaty of 1783, which fixes and recognises the boundary of the United States without making any reservation respecting Indian tribes.

But the British plenipotentiaries, unable to produce a solitary precedent of one European Power treating for the savages inhabiting within the dominions of another, have been compelled, in support of their principle, to refer to the German Empire, a body consisting of several independent States, recognised as such by the whole world, and separately maintaining, with foreign Powers, the relations belonging to such a condition. Can it be necessary to prove that there is no sort of analogy between the political situation of these civilized communities and that of the wandering tribes of North American savages?

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In referring to what the British plenipotentiaries represent as alarming and novel pretensions, which Great Britain can never authorize, the undersigned might complain that these alleged pretensions have not been stated, either in terms or in substance, as expressed by themselves. This, however, is the less material as any further recognition of them by Great Britain is not necessary nor required. On the other hand, they can never admit nor recognise the principles or pretensions asserted in the course of this correspondence by the British plenipotentiaries, and which to them appear novel and alarming.

The article proposed by the British plenipotentiaries in their last note, not including the Indian tribes as parties in the peace, and leaving the United States free to effect its object in the mode consonant with the relations which they have constantly maintained with those tribes; partaking, also, of the nature of an amnesty, and being at the same time reciprocal, is not liable to that objection, and accords with the views uniformly professed by the undersigned of placing those tribes precisely, and in every respect in the same situation as that in which they stood before the commencement of hostilities. This article, thus proposing only what the undersigned have so often assured the British plenipotentiaries would necessarily follow, if, indeed, it has not already, as is highly probable, preceded, a peace between Great Britain and the United States, the undersigned agree to admit it in substance as a provisional article, subject, in the manner originally proposed by the British Government, to the approbation or rejection of the Government of the United States, which, having given no instructions to the undersigned on this point, cannot be bound by any article they may admit on the subject.

It will, of course, be understood that if, unhappily, peace should not be the result of the present negotiation, the article thus conditionally agreed to shall be of no effect, and shall not, in any future negotiation, be brought forward by either party by way of argument or precedent.

This article having been presented as an indispensable preliminary, and being now accepted, the undersigned request the British plenipotentiaries to communicate to them a project of a treaty embracing all the points deemed material by Great Britain, the undersigned engaging on their part, to deliver, immediately after, a counter project with respect to all the articles to which they may not agree, and on the subjects deemed material by the United States, and which may be admitted in the British project.

JOHN QUINCY ADAMS,
JAMES A. BAYARD,
HENRY CLAY,
JONATHAN RUSSELL,
ALBERT GALLATIN.

Mr. Monroe to the American plenipotentiaries at Ghent.

DEPARTMENT OF STATE, *October 19, 1814.*

GENTLEMEN: I have the honor to inform you that your despatches by the *John Adams* have been received, and that your determination to reject the terms proposed by the British commissioners is entirely approved by the President.

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The importance of these despatches, and the great probability of your negotiation having been brought to a close, induced the President to determine on laying them before Congress immediately. This has been done, and there is every reason to believe that they are producing the best effect, in uniting all parties in a determined resistance to the extravagant pretensions of the enemy. It has also been judged proper to communicate to Congress, so much of the instructions given to you by this Department as would show the terms on which you were authorized to make peace.

These, as well as your communications, have been printed, and several copies are now forwarded to you, as it is believed they may be usefully disposed of in Europe.

Should any circumstance have unexpectedly prolonged the negotiation, which it is inferred from your despatches will have been finally closed, and you find the British commissioners disposed to agree to the *status ante bellum*, you will understand that you are authorized to make it the basis of a treaty.

I have the honor to be, with great respect, gentlemen, your obedient servant,

JAMES MONROE.

The British to the American plenipotentiaries.

GHENT, *October 21, 1814.*

The undersigned have had the honor of receiving the note of the American plenipotentiaries of the 13th instant, communicating their acceptance of the article which the undersigned had proposed on the subject of the pacification and rights of the Indian nations.

The undersigned are happy in being thus relieved from the necessity of recurring to several topics which, though they arose in the course of their discussions, have only an incidental connexion with the differences remaining to be adjusted between the two countries.

With a view to this adjustment, the undersigned, preferring in the present state of the negotiation a general statement to the formal arrangement of articles, are willing so far to comply with the request of the American plenipotentiaries contained in their last note, as to waive the advantage to which they think they were fairly entitled, of requiring from them the first *projet* of a treaty.

The undersigned having stated, at the first conference, the points upon which His Majesty's Government considered the discussions between the two countries as likely to turn, cannot better satisfy the request of the American plenipotentiaries than by referring them to that conference for a statement of the points which, in the opinion of His Majesty's Government, yet remain to be adjusted.

With respect to the forcible seizure of mariners from on board merchant vessels on the high seas, and the right of the King of Great Britain to the allegiance of all his native subjects, and with respect to the maritime rights of the British empire, the undersigned conceive that, after the pretensions asserted by the Government of the United States, a more satisfactory proof of the conciliatory spirit of His Majesty's Government cannot be given than by not requiring any stipulation on those subjects, which, though most important in themselves, no longer, in consequence of the maritime pacification of Europe, produce the same practical results.

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On the subject of the fisheries, the undersigned expressed, with so much frankness, at the conference already referred to, the views of their Government, that they consider any further observations on that topic as unnecessary at the present time.

On the question of the boundary between the dominions of His Majesty and those of the United States, the undersigned are led to expect, from the discussion which this subject has already undergone, that the northwestern boundary, from the Lake of the Woods to the Mississippi, (the intended arrangement of 1803) will be admitted without objection.

In regard to other boundaries, the American plenipotentiaries, in their note of August 24th, appeared in some measure to object to the propositions then made by the undersigned, as not being on the basis of *uti possidetis*. The undersigned are willing to treat on that basis, subject to such modifications as mutual convenience may be found to require; and they trust that the American plenipotentiaries will show, by their ready acceptance of this basis, that they duly appreciate the moderation of His Majesty's Government in so far consulting the honor and fair pretensions of the United States, as, in the relative situation of the two countries, to authorize such a proposition.

The undersigned avail themselves of this opportunity to renew to the American plenipotentiaries the assurance of their high consideration.

GAMBIER.
HENRY GOULBURN.
WILLIAM ADAMS.

The American to the British plenipotentiaries.

GHENT, *October 24, 1814.*

The undersigned have the honor to acknowledge the receipt of the note of the British plenipotentiaries of the 21st instant.

Amongst the general observations which the undersigned, in their note of the 24th August, made on the propositions then brought forward on the part of the British Government, they remarked that those propositions were founded neither on the basis of *uti possidetis* nor on that of *status ante bellum*. But so far were they from suggesting the *uti possidetis* as the basis on which they were disposed to treat, that, in the same note, they expressly stated that they had been instructed to conclude a peace on the principle of both parties restoring whatever territory they might have taken. The undersigned also declared in that note, that they had no authority to cede any part of the territory of the United States; and that to no stipulation to that effect would they subscribe. And in the note of the 9th September, after having shown that the basis of *uti possidetis*, such as it was known to exist at the commencement of the negotiation, gave no claim to His Britannic Majesty to cessions of territory founded upon the right of conquest; they added that, even if the chances of war should give to the British arms a momentary possession of other parts of the territory of the United States, such events would not alter their views with regard to the terms of peace, to which they would give their consent.

The undersigned can now only repeat those declarations, and decline treating upon the basis of *uti possidetis*, or upon any other

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principle involving a cession of any part of the territory of the United States. As they have uniformly stated, they can treat only upon the principle of a mutual restoration of whatever territory may have been taken by either party. From this principle they cannot recede; and the undersigned, after the repeated declarations of the British plenipotentiaries, that Great Britain had no view to acquisition of territory in this negotiation, deem it necessary to add, that the utility of its continuance depends on their adherence to this principle.

The undersigned having declared in their note of the 24th of August, that, although instructed and prepared to enter into an amicable discussion of all the points on which differences or uncertainty had existed, and which might hereafter tend to interrupt the harmony of the two countries, they would not make the conclusion of the peace at all depend upon a successful result of the discussion; and having since agreed to the preliminary article proposed by the British Government, had believed that the negotiations, already so long protracted, could not be brought to an early conclusion, otherwise than by a communication of a *projet*, embracing all the other specific propositions which Great Britain intended to offer. They repeat their request in that respect, and will have no objection to a simultaneous exchange of the *projet* of both parties. This course will bring fairly into discussion the other topics embraced in the last note of the British plenipotentiaries, to which the undersigned have thought it unnecessary to advert at the present time.

The undersigned renew to the British plenipotentiaries the assurance of their high consideration.

JOHN QUINCY ADAMS,
JAMES A. BAYARD,
HENRY CLAY,
JONATHAN RUSSELL,
A. GALLATIN.

To the Plenipotentiaries of His Britannic Majesty, &c., Ghent.

The British to the American plenipotentiaries.

GHENT, *October 31, 1814.*

The undersigned have the honor to acknowledge the receipt of the note addressed to them by the American plenipotentiaries on the 24th instant, in which they object to the basis of *uti possidetis*, proposed by the undersigned as that on which they were willing to treat, in regard to part of the boundaries between the dominions of His Majesty and those of the United States.

The American plenipotentiaries, in their note of the 13th instant, requested the undersigned to communicate to them the *projet* of a treaty embracing all the points insisted on by Great Britain, engaging, on their part, to deliver immediately after a *contre-projet*, as to all the articles to which they might not agree, and as to all the subjects deemed material by the United States, and omitted in the *projet* of the undersigned.

The undersigned were accordingly instructed to waive the question of etiquette, and the advantage which might result from receiving the first communication, and, confiding in the engagement of the

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American plenipotentiaries, communicated in their note of the 21st instant, all the points upon which they were instructed to insist.

The American plenipotentiaries have objected to one essential part of the *projet* thus communicated; but before the undersigned can enter into the discussion of this objection, they must require from the American plenipotentiaries that, pursuant to their engagement, they will deliver a *contre-projet*, containing all their objections to the points submitted by the undersigned, together with a statement of such further points as the Government of the United States consider to be material.

The undersigned are authorized to state distinctly that the article as to the pacification and right of the Indian nations having been accepted, they have brought forward in their note of the 21st instant all the propositions which they have to offer. They have no further demands to make, no other stipulations on which they are instructed to insist, and they are empowered to sign a treaty of peace forthwith, in conformity with those stated in their former note.

The undersigned trust, therefore, that the American plenipotentiaries will no longer hesitate to bring forward, in the form of articles or otherwise, as they may prefer, those specific propositions upon which they are empowered to sign a treaty of peace between the two countries.

The undersigned avail themselves of the present opportunity to renew to the plenipotentiaries of the United States the assurance of their high consideration.

GAMBIER,
HENRY GOULBURN,
WILLIAM ADAMS.

The American to the British plenipotentiaries.

GHENT, *November 10, 1814.*

The undersigned have the honor to acknowledge the receipt of the note addressed to them by His Britannic Majesty's plenipotentiaries on the 31st ultimo.

The undersigned had considered an interchange of the *projet* of a treaty as the course best calculated to exclude useless and desultory discussion, to confine the attention of both parties to the precise objects to be adjusted between the two nations, and to hasten the conclusion of the peace so desirable to both. Finding in the note of the British plenipotentiaries of the 21st ultimo a mere reference to the points proposed by them in the first conference, with the offer of assuming the basis of *uti possidetis*, on which the undersigned had, in substance, already declined to treat, they did not consider it as the *projet* of a treaty, presented in compliance with their request. They proposed in their note of the 24th ultimo, that the exchange of the two *projets* should be made at the same time. And it is not without some surprise that the undersigned observe in the note to which they now have the honor of replying, that the British plenipotentiaries consider their note of the 21st ultimo as containing the *projet* of a treaty, to which the undersigned are supposed to be pledged to return a *contre-projet*.

Believing that where both parties are sincerely desirous of bringing a negotiation to a happy termination, the advantage of giving or

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of receiving the first draught is not of a magnitude to be made a subject of controversy, and convinced that their Government is too sincerely desirous of that auspicious result to approve of its being delayed for a moment upon any question of etiquette, the undersigned have the honor to enclose herewith the *projet* of a treaty, accompanied with some observations upon several of the articles, which may more fully elucidate their objects in proposing them.

The British plenipotentiaries stated in their last note that they had no other propositions to offer, nor other demands to make, than those contained in their note of the 21st ultimo, which, with the reference to their former declaration respecting the fisheries, contains only two propositions, viz: that of fixing the boundary from the Lake of the Woods to the Mississippi; and that of adopting, with respect to the other boundaries, the basis of *uti possidetis.*

In answer to the declaration made by the British plenipotentiaries respecting the fisheries, the undersigned, referring to what passed in the conference of the 9th August, can only state that they are not authorized to bring into discussion any of the rights or liberties which the United States have heretofore enjoyed in relation thereto. From their nature, and from the peculiar character of the treaty of 1783, by which they were recognised, no further stipulation has been deemed necessary by the Government of the United States to entitle them to the full enjoyment of all of them.

The undersigned have already, in their last note, explicitly declined treating on the basis of *uti possidetis.* They cannot agree to any other principle than that of a mutual restoration of territory, and have accordingly prepared an article founded on that basis. They are willing even to extend the same principle to the other objects in dispute between the two nations; and in proposing all the other articles included in this *projet*, they wish to be distinctly understood that they are ready to sign a treaty placing the two countries, in respect to all the subjects of difference between them, in the same state they were in at the commencement of the present war; reserving to each party all its rights, and leaving whatever may remain of controversy between them for future and pacific negotiation.

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The article fixing a limitation for captures at sea does not seem to require any comment.

The undersigned present their entire *projet* in this specific form, with the full expectation of receiving from the British plenipotentiaries their explicit answer respecting all the articles embraced in it, and a *projet* also reduced to specific propositions and embracing all the objects which they intend to bring forward.

The undersigned renew to the British plenipotentiaries the assurances of their high consideration.

JOHN QUINCY ADAMS,
J. A. BAYARD,
H. CLAY,
JONATHAN RUSSELL,
ALBERT GALLATIN.

To the Plenipotentiaries of His Britannic Majesty, &c., &c., &c

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[Inclosure.]

COPY OF PROJET OF A TREATY OF PEACE SUBMITTED BY THE AMERICAN TO THE BRITISH PLENIPOTENTIARIES AT GHENT, ON THE 10TH DAY OF NOVEMBER, 1814, AND OF THE ALTERATIONS AND PROPOSITIONS MADE BY THE LATTER IN THE MARGIN OF THE SAID PROJET, RETURNED BY THEM TO THE AMERICAN PLENIPOTENTIARIES.

Treaty of peace and amity between His Britannic Majesty and the United States of America.

* * * * * * *

ARTICLE 8.

It is agreed that a line drawn due north or south, (as the case may be) from the most northwestern point of the Lake of the Woods, until it shall intersect the forty-ninth parallel of north latitude, and from the point of such intersection due west along and with the said parallel, shall be the dividing line between His Majesty's territories and those of the United States to the westward of the said lake, as far as the said respective territories extend in that quarter, and that the said line shall to that extent form the southern boundary of His Majesty's said territories, and the northern boundary of the said territories of the United States: provided that nothing in the present article shall be construed to extend to the northwest coast of America, or to the territories belonging to, or claimed by either party on the continent of America to the westward of the Stony Mountains.

[British alterations.]

ARTICLE 8.

It is agreed that a line drawn due west from the Lake of the Woods, along forty-ninth parallel of north latitude, shall be the line of demarcation between His Britannic Majesty's territories and those of the United States to the westward of the said lake, so far as the territories of the United States extend in that quarter, and the said line shall, to that extent, form the southern boundary of His Britannic Majesty's territories and the northern boundary of the territories of the United States. It being always distinctly understood that nothing in the present article shall be construed to extend to the northwest coast of America, or to territories belonging to, or claimed by, either party on the continent of America westward of the Stony Mountains, (and it is further agreed the subjects of His Britannic Majesty shall at all times have access) from His Britannic Majesty's territories, by land or inland navigation, into the aforesaid territories of the United States to the river Mississippi, with their goods, effects, and merchandise, and that His Britannic Majesty's subjects shall have and enjoy the free navigation of the said river.

* * * * * * *

True copy of the *projet* submitted by the American to the British ministers; and also of the marginal changes, propositions, and remarks made by the latter on returning their answer to the American minister's note communicating said *projet* of a treaty.

CHRISTOPHER HUGHES, Jun.,
Secretary of American mission extraordinary.

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The British to the American plenipotentiaries.

GHENT, *November 26, 1814.*

The undersigned have had the honor to receive the note and projet of a treaty of peace presented by the American plenipotentiaries on the 10th instant.

The undersigned are of opinion that the most convenient course for them to adopt will be to return this *projet* with their marginal alterations and suggestions on the several articles of which it is composed. The existing differences between the two Governments will thus be brought more immediately in view, and it is hoped that by confining the discussions to one *projet*, the negotiations may sooner be brought to a favorable conclusion. * * *

The undersigned think proper to add that, with respect to the particular alterations suggested by them in various articles of the *projet*, they are ready to enter into such explanations as may be required of them, with the sincere desire of endeavoring to reconcile the pretensions brought forward on the part of their respective Governments.

The undersigned have forborne to insist upon the basis of *uti possidetis*, to the advantage of which they consider their country fully entitled. But should this negotiation terminate in a way contrary to their hopes and just expectations, they must protest against any claim or demand being urged by the American Government in any future negotiation, in consequence of the facilities which His Majesty's Government have now shown themselves willing to afford to the speedy restoration of peace.

The undersigned avail themselves of the present opportunity to renew to the plenipotentiaries of the United States the assurances of their high consideration.

GAMBIER,
HENRY GOULBURN.
WILLIAM ADAMS.

The American to the British plenipotentiaries.

GHENT, *November 30, 1814.*

The undersigned have had the honor to receive the note of the British plenipotentiaries of the 26th instant, together with their marginal alterations and suggestions on the several articles of the *projet* of a treaty of peace proposed by the undersigned.

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Sincerely participating in the desire expressed by the British plenipotentiaries of endeavoring to reconcile the pretensions of both Governments, on the few subjects remaining for discussion, the undersigned have also assented to most of the alterations proposed by the British plenipotentiaries to those parts of the *projet* which they have not entirely rejected. To some of these alterations the undersigned are compelled, by their duty, to object. They have already stated, and now repeat, that, whilst requiring of Great Britain no sacrifice whatever, the Government of the United States has not authorized the undersigned to agree to any stipulation involving any cession of

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territory, or the dereliction of any of the essential rights of the people of the United States.

The objections of the undersigned are to one of the alterations suggested by the British plenipotentiaries in the first article; to some parts of the preamble of the third article, and to the eighth article; and they have also some other verbal alterations to suggest. They request a conference, at such time and place as may suit the British plenipotentiaries, for the purpose of discussing those points, and of agreeing on the places and time left in blank in several of the articles.

The undersigned renew to the British plenipotentiaries the assurance of their high consideration.

JOHN QUINCY ADAMS,
JAMES A. BAYARD,
HENRY CLAY,
JONATHAN RUSSELL,
ALBERT GALLATIN.

The British to the American plenipotentiaries.

GHENT, *November 30, 1814.*

The undersigned have the honor to acknowledge the receipt of the note addressed to them by the American plenipotentiaries, and, in compliance with their request for a conference, shall be happy to receive them at the Chartreux to-morrow at 12 o'clock.

The undersigned request the American plenipotentiaries to accept the assurance of their high consideration.

GAMBIER,
HENRY GOULBURN,
WILLIAM ADAMS.

Protocol of a conference held the 1st December, 1814, at Ghent.

At a conference held this day, the American plenipotentiaries proposed the following alterations in their *projet*, as amended by the British plenipotentiaries.

* * * * * * *

8th. Article 8th. Substitute after the words "to the westward of the said lake so far as," the words "their said respective territories," instead of the words "the territories of the United States."—Agreed to by the British plenipotentiaries.

9th. Article 8th. Strike out from the words "and it is further agreed" to the end.—Reserved by the British plenipotentiaries for the consideration of their Government.

10th. The American plenipotentiaries also proposed the following amendment to article 8th, viz: "'The inhabitants of the United States shall continue to enjoy the liberty to take, dry, and cure fish in places within the exclusive jurisdiction of Great Britain, as secured by the former treaty of peace; and the navigation of the river Mississippi within the exclusive jurisdiction of the United States shall remain free and open to the subjects of Great Britain, in the manner secured by the said treaty; and it is further agreed, that the subjects of His Britannic Majesty shall, at all times, have access from such place as may be selected for that purpose in His Britannic

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Majesty's aforesaid territories, west, and within three hundred miles of the Lake of the Woods, in the aforesaid territories of the United States, to the river Mississippi, in order to enjoy the benefit of the navigation of that river with their goods, effects, and merchandise, whose importation into the said States shall not be entirely prohibited, on the payment of the same duties as would be payable on the importation of the same into the Atlantic ports of the said States, and on conforming with the usual custom-house regulations."

This amendment was left with the British plenipotentiaries for consideration.

The American plenipotentiaries also intimated their willingness to omit article 8 altogether, if that course should appear more advisable to the British plenipotentiaries.

The American plenipotentiaries further proposed, in conformity with their note of November 30, indemnification for ships detained in British ports on the breaking out of the war, and afterwards condemned; which was resisted by the British plenipotentiaries.

After much discussion on this point, the conference was adjourned.

CHRISTOPHER HUGHES, Jun.
Secretary of American Mission Extraordinary.

Protocol of conference on December 10, 1814.

The protocol of the preceding conference held on the 1st instant was settled.

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The British plenipotentiaries then stated that with respect to the 8th article, their Government offered in lieu of the American proposals to retain the amended article as far as the words, "Stony mountains," and insert the following stipulation:

"His Britannic Majesty, agrees to enter into negotiation with the United States of America, respecting the terms, conditions, and regulations under which the inhabitants of the said United States shall have the liberty of taking fish on certain parts of the coast of Newfoundland, and other of His Britannic Majesty's dominions in North America, and of drying and curing fish, in the unsettled bays, harbors and creeks of Nova Scotia, Magdalen islands, and Labrador; as stipulated in the latter part of the third article of the treaty of 1783, in consideration of a fair equivalent to be agreed upon between His Majesty and the said United States, and granted by the said United States, for such liberty as aforesaid."

"The United States of America agree to enter into negotiation with His Britannic Majesty respecting the terms, conditions, and regulations under which the navigation of the river Mississippi from its source to the ocean, as stipulated in the eighth article of the treaty of 1873, shall remain free and open to the subjects of Great Britain, in consideration of a fair equivalent, to be agreed upon between His Majesty and the United States, and granted by His Majesty."—Received by the American plenipotentiaries for consideration.

* * * * * * *

The conference then ended.

CHRISTOPHER HUGHES, Jun.
Secretary of American Mission Extraordinary.

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Protocol of conference on December 12, 1814.

The protocol of the preceding conference held on the 10th instant was settled.

After much discussion relative to the first and eighth articles, the conference ended by the American plenipotentiaries undertaking to return an answer in writing to the propositions brought forward by the British plenipotentiaries at the last conference.

C. HUGHES, Jun.
Secretary of American Mission Extraordinary.

American note, written after the conference of the 12th December.

GHENT, *December 14, 1814.*

The undersigned having considered the propositions offered in the conference of the 10th instant by the British plenipotentiaries on the few subjects which remain to be adjusted, now have the honor of making the communication which they promised.

* * * * * * *

To the stipulation now proposed by the British plenipotentiaries as a substitute for the last paragraph of the eighth article, the undersigned cannot accede.

The proposition made respecting the navigation of the Mississippi, in the alteration first proposed by the British plenipotentiaries to that article, was unexpected. In their note of the 31st of October they had stated that they had brought forward, in their note of the 21st of the same month, all the propositions which they had to offer; and that subject was not mentioned either in this last mentioned note, or in the first conference to which it referred. In order to obviate any difficulty arising from a presumed connexion between that subject and that of the boundary proposed by the eighth article, the undersigned expressed their willingness to omit the article altogether. For the purpose of meeting what they believed to be the wishes of the British Government, they proposed the insertion of an article which should recognize the right of Great Britain to the navigation of that river, and that of the United States to a liberty in certain fisheries, which the British Government considered as abrogated by the war. To such an article, which they viewed as merely declaratory, the undersigned had no objection, and have offered to accede. They do not, however, want any new article on either of those subjects; they have offered to be silent with regard to both. To the stipulation now proposed, or to any other, abandoning, or implying the abandonment of any right in the fisheries claimed by the United States, they cannot subscribe. As a stipulation merely that the parties will hereafter negotiate concerning the subjects in question, it appears also unnecessary. Yet to an engagement, couched in general terms, so as to embrace all the subjects of difference not yet adjusted, or so expressed as to imply in no manner whatever an abandonment of any right claimed by the United States, the undersigned are ready to agree.

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The undersigned renew to the British plenipotentiaries the assurance of their high consideration.

JOHN QUINCY ADAMS,
JAMES A. BAYARD,
HENRY CLAY,
JONATHAN RUSSELL,
ALBERT GALLATIN.

* * * * * * *

The British to the American plenipotentiaries.

GHENT, *December 22, 1814.*

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So far as regards the substitution proposed by the undersigned for the last clause of the 8th article, as it was offered solely with the hope of attaining the object of the amendment tendered by the American plenipotentiaries at the conference of the 1st instant, no difficulty will be made in withdrawing it.

The undersigned, returning to the declaration made by them at the conference of the 8th of August, that the privileges of fishing within the limits of the British sovereignty, and of using the British territories for purposes connected with the fisheries, were what Great Britain did not intend to grant without equivalent, are not desirous of introducing any article upon the subject.

With a view of removing what they consider as the only objection to the immediate conclusion of the treaty, the undersigned agree to adopt the proposal made by the American plenipotentiaries at the conference of the 1st instant, and repeated in their last note, of omitting the 8th article altogether.

The undersigned avail themselves of the opportunity to renew to the plenipotentiaries of the United States the assurance of their high consideration.

GAMBIER,
HENRY GOULBURN,
WILLIAM ADAMS.

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Protocol of conference.

GHENT, *December 23, 1814.*

At a conference held this day, the protocol of the preceding conference was settled.

The American plenipotentiaries intimated their readiness to accede to the propositions contained in the note of the British plenipotentiaries of the 22nd instant.

* * * * * *

The American Plenipotentiaries to Mr. Monroe.

GHENT, *December 25, 1814.*

SIR: We have the honor of transmitting herewith one of the three copies of the treaty of peace between Great Britain and the United States, signed last evening by the plenipotentiaries of His Britannic Majesty and by us.

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The papers, of which copies are likewise now forwarded, will exhibit to you so fully the progress of the negotiation since the departure of the *Chauncey*, that few additional remarks from us will be necessary. It may be proper for us, however, to state that, in the interval between the time when our first *projet* of a treaty was sent to the British plenipotentiaries and that when they communicated to us the answer to it, the despatches which we had sent by Mr. Dallas, and the instructions to us, which had been published in the United States, were republished in England. In declining to insist on the articles respecting impressment and indemnities, we made a formal declaration that the rights of both parties on the subject of seamen and the claims to indemnities for losses and damages sustained prior to the commencement of the war should not be affected or impaired by the omission in the treaty of a specific provision on these two subjects.

From the time when the *projet* of the treaty presented by us was returned with the proposed alterations, it was apparent that, unless new pretensions on the part of Great Britain should be advanced, the only important differences remaining to be discussed were those relating to the mutual restoration of territory taken during the war, to the navigation of the Mississippi by British subjects, and to the right of the people of the United States to the fisheries within the British jurisdiction. Instead of a general restitution of captured territory, which we had proposed, the British Government at first wished to confine it to the territory taken by either party belonging to the other. On our objecting that this would make each party the judge whether territory taken did or did not belong to the other, and thereby occasion new disputes, they acknowledged it to be their object that each party should, until a decision had taken place with respect to the title, retain possession of all the territory claimed by both parties, which might have been taken by such party during the war. They proposed, however, to limit the exception from mutal restitution to the islands in the bay of Passamaquoddy. As it had been on both sides admitted that the title to these islands was disputed, and as a method of settling amicably those disputes was provided for in the treaty, we had not expected that the British Government would adhere to the demand of retaining the temporary possession of those islands. We insisted, therefore, on their being included in the general restoration, until we had reason to believe that our further perseverance would have hazarded the conclusion of the peace itself. We finally consented, as an alternative preferable to the continuance of the war, to this exception, upon condition that it should not be understood as impairing in any manner the right of the United States to these islands. We also urged for a stipulation requiring an ultimate decision upon the title within a limited time; but to this we also found opposed an insuperable objection, and we were finally induced to accept in its stead a declaration of the British plenipotentiaries, that no unnecessary delay of the decision should be interposed on the part of Great Britain.

At the first conference, on the 8th of August, the British plenipotentiaries had notified to us that the British Government did not intend henceforth to allow to the people of the United States, without an equivalent, the liberties to fish and to dry and cure fish within the exclusive British jurisdiction, stipulated in their favor by the latter

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part of the third article of the treaty of peace of 1783. And in their note of the 19th of August, the British plenipotentiaries had demanded a new stipulation, to secure to British subjects the right of navigating the Mississippi; a demand which, unless warranted by another article of that same treaty of 1783, we could not perceive that Great Britain had any colorable pretence for making. Our instructions had forbidden us to suffer our right to the fisheries to be brought into discussion, and had not authorized us to make any distinction in the several provisions of the third article of the treaty of 1783, or between that article and any other of the same treaty. We had no equivalent to offer for a new recognition of our right to any part of the fisheries, and we had no power to grant any equivalent which might be asked for it by the British Government. We contended that the whole treaty of 1783 must be considered as one entire and permanent compact, not liable, like ordinary treaties, to be abrogated by a subsequent war between the parties to it; as an instrument recognising the rights and liberties enjoyed by the people of the United States as an independent nation, and containing the terms and conditions on which the two parts of one empire had mutually agreed, thenceforth, to constitute two distinct and separate nations. In consenting, by that treaty, that a part of the North American continent should remain subject to the British jurisdiction, the people of the United States had reserved to themselves the liberty, which they had ever before enjoyed, of fishing upon that part of its coasts, and of drying and curing fish upon the shores, and this reservation had been agreed to by the other contracting party. We saw not why this liberty, then no new grant, but the mere recognition of a prior right always enjoyed, should be forfeited by war, any more than any other of the rights of our national independence; or why we should need a new stipulation for its enjoyment more than we needed a new article to declare that the King of Great Britain treated with us as free, sovereign, and independent States. We stated this principle in general terms to the British plenipotentiaries, in the note, which we sent to them with our *projet* of the treaty, and we alleged it as the ground upon which no new stipulation was deemed by our Government necessary to secure to the people of the United States all the rights and liberties stipulated in their favor by the treaty of 1783. No reply to that part of our note was given by the British plenipotentiaries, but, in returning our *projet* of a treaty, they added a clause to one of the articles, stipulating a right for British subjects to navigate the Mississippi. Without adverting to the ground of prior and immemorial usage, if the principle were just that the treaty of 1783, from its peculiar character, remained in force in all its parts, notwithstanding the war, no new stipulation was necessary to secure to the subjects of Great Britain the right of navigating the Mississippi, so far as that right was secured by the treaty of 1783, as, on the other hand, no stipulation was necessary to secure to the people of the United States the liberty to fish, and to dry and cure fish, within the exclusive jurisdiction of Great Britain. If they asked the navigation of the Mississippi as a new claim, they could not expect we should grant it without an equivalent; if they asked it because it had been granted in 1783, they must recognise the claim of the people of the United States to the liberty to fish and to dry and cure fish, in question. To place both points beyond all future controversy, a majority

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of us determined to offer to admit an article confirming both the rights, or we offered at the same time to be silent in the treaty upon both, and to leave out altogether the article defining the boundary from the Lake of the Woods westward. They finally agreed to this last proposal, but not until they had proposed an article stipulating for a future negotiation for an equivalent to be given by Great Britain for the navigation of the Mississippi, and by the United States for the liberty as to the fisheries within British jurisdiction. This article was unnecessary with regard to its professed object, since both Governments had it in their power, without it, to negotiate upon these subjects if they pleased. We rejected it, although its adoption would have secured the boundary of the forty-ninth degree of latitude west of the Lake of the Woods, because it would have been a formal abandonment, on our part, of our claim to the liberty as to the fisheries, recognised by the treaty of 1783.

You will perceive by the correspondence, that the ninth article was offered us as a *sine qua non* and an ultimatum. We accepted it, not without much hesitation, as the only alternative to a rupture of the negotiation, and with a perfect understanding that our Government was free to reject it, as we were not authorized to subscribe to it.

To guard against any accident which might happen in the transmission of a single copy of the treaty to the United States, the British plenipotentiaries have consented to execute it in triplicate; and, as the treaty with the British ratification may be exposed to the same danger, the times for the cessation of hostilities, the restoration of captures at sea, and the release of prisoners, have been fixed, not from the exchange of ratifications, but from the ratification on both sides, without alteration by either of the contracting parties. We consented to the introduction of this latter provision at the desire of the British plenipotentiaries, who were willing to take a full, but were unwilling to incur the risk of a partial, ratification, as the period from which the peace should be considered as concluded.

We are informed by them that Mr. Baker, their secretary, is to go out to America with the British ratification.

We have the honor to be, very respectfully, sir, your most humble, and obedient servants,

JOHN QUINCY ADAMS,
J. A. BAYARD,
H. CLAY,
JONATHAN RUSSELL,
ALBERT GALLATIN.

Mr. Gallatin to Mr. Monroe.

GHENT, *December 25, 1814.*

SIR: The treaty which we signed yesterday with the British ministers is, in my opinion, as favorable as could be expected, under existing circumstances, so far as they were known to us. The attitude taken by the State of Massachusetts, and the appearances in some of the neighboring States, had a most unfavorable effect. Of the probable result of the congress at Vienna we had no correct information. The views of all the European Powers were precisely

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known, from day to day, to the British ministry. From neither of them did we, in any shape, receive any intimation of their intentions, of the general prospect of Europe, or of the interest they took in our contest with Great Britain. I have some reason to believe that all of them were desirous that it might continue. They did not intend to assist us; they appeared indifferent about our difficulties; but they rejoiced at any thing which might occupy, and eventually weaken, our enemy. The manner in which the campaign has terminated; the evidence afforded, by its events, of our ability to resist, alone, the now very formidable military power of England; and our having been able, without any foreign assistance, and after she had made such an effort, to obtain peace on equal terms, will raise our character and consequence in Europe. This, joined with the naval victories, and the belief that we alone can fight the English on their element, will make us to be courted as much as we have been neglected by foreign Governments. As to the *people* of Europe, public opinion was already most decidedly in our favor. I anticipate a settlement with Spain on our own terms, and the immediate chastisement of the Algerines. Permit me to suggest the propriety of despatching a squadron for that purpose, without losing a single moment.

I have little to add to our public despatch on the subject of the terms of the treaty. I really think that there is nothing but nominal in the Indian article, as adopted. With respect to precedent, you will find two, though neither is altogether in point, viz. the ——— article of the treaty of Utrecht, and the latter part of the ——— article of our treaty with Spain. You know that there was no alternative between breaking off the negotiations and accepting the article; and that we accepted it only as provisional, and subject to your approbation or rejection.

The exception of Moose island from the general restoration of territory is the only point on which it is possible that we might have obtained an alteration, if we had adhered to our opposition to it. The British Government had long fluctuated on the question of peace: a favorable account from Vienna, the report of some success in the Gulf of Mexico, or any other incident, might produce a change in their disposition; they had already, after the question had been referred to them, declared that they could not consent to a relinquishment of that point. We thought it too hazardous to risk the peace on the question of the temporary possession of that small island, since the question of title was fully reserved; and it was, therefore, no cession of territory.

On the subject of the fisheries within the jurisdiction of Great Britain, we have certainly done all that could be done. If, according to the construction of the treaty of 1783, which we assumed, the right was not abrogated by the war, it remains entire, since we most explicitly refused to renounce it, either directly or indirectly. In that case, it is only an unsettled subject of difference between the two countries. If the right must be considered as abrogated by the war, we cannot regain it without an equivalent. We had none to give but the recognition of their right to navigate the Mississippi, and we offered it. On this last supposition, this right is also lost to them; and, in a general point of view, we have certainly lost nothing. But we have done all that was practicable in support of the right to those fisheries; first, by the ground we assumed, respecting the con-

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struction of the treaty of 1783; secondly, by the offer to recognise the British right to the navigation of the Mississippi; thirdly, by refusing to accept from Great Britain both her implied renunciation of the right of that navigation and the convenient boundary of 49°, for the whole extent of our and her territories west of the Lake of the Woods, rather than to make an implied renunciation, on our part, to the right of America to those particular fisheries.

I believe that Great Britain is very desirous of obtaining the northern part of Maine, say from about 47° north latitude to the northern extremity of that district, as claimed by us. They hope that the river which empties into the Bay des Chaleurs, in the Gulf of St. Lawrence has its source so far west as to intervene between the head waters of the river St. John and those of the streams emptying into the river St. Lawrence: so that the line north from the source of the river St. Croix will first strike the heights of land which divide the waters emptying into the Atlantic ocean (river St. John) from those emptying into the Gulf of St. Lawrence. (river des Chaleurs,) and afterwards the heights of land which divide the waters emptying into the Gulf of St. Lawrence (river des Chaleurs) from those emptying into the river St. Lawrence; but that the said line never can, in the words of the treaty, strike any spot of land actually dividing the waters emptying into the Atlantic ocean from those which fall into the river St. Lawrence. Such will be the foundation of their disputing our claim to the northern part of that territory; but, feeling that it is not very solid, I am apt to think that they will be disposed to offer the whole of Passamaquoddy bay and the disputed fisheries as an equivalent for the portion of northern territory which they want, in order to connect New Brunswick and Quebec. This may account for their tenacity with respect to the temporary possession of Moose island, and for their refusing to accept the recognition of their right to the navigation of the Mississippi, provided they recognise ours to the fisheries.

That northern territory is of no importance to us, and belongs to the United States, and not to Massachusetts, which has not the shadow of a claim to any land north of 45° to the eastward of the Penobscot river, as you may easily convince yourself of, by recurring to her charters.

I have the honor to be, with respect, &c.

ALBERT GALLATIN.

The Hon. the SECRETARY OF STATE OF THE UNITED STATES,
Washington.

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Mr. Monroe to Mr. Baker.

DEPARTMENT OF STATE, *July 18, 1815.*

SIR: I have the honor to communicate to you a copy of a letter from the collector of the customs at Barnstable to the Secretary of the Treasury, by which it appears that an American vessel engaged in the cod fishery, in longitude 65° 20″, latitude 42° 41″, was warned off by the commander of the British sloop of war *Jaseur*, and ordered not to approach within sixty miles of the coast; with which order the commander of the American vessel immediately complied. It appears, also, that a similar warning had been given by the commander of the *Jaseur* to all the other American vessels that were then in sight.

This extraordinary measure has excited no small degree of surprise. Being altogether incompatible with the rights of the United States, it is presumed that it has not been authorized by your Government. I invite your attention to it, in the hope that as you have been charged by your Government with the execution of the late treaty of peace, and are acquainted with its views on all questions connected with it, you will consider yourself authorized to interpose to prevent the progress of an evil which will be so extensively and deeply felt by the citizens of the United States.

I have the honor, &c. JAMES MONROE.

ANTHONY ST. JOHN BAKER, Esq., &c.

[Inclosure.]

Collector of the Customs at Barnstable to the Secretary of the Treasury.

COLLECTOR'S OFFICE,
Barnstable, July 3, 1815.

SIR:—I think it my duty to inform you that the captain of a vessel regularly licensed for the cod fishery has just reported to this office that on the 19th day of June last, being in longitude 65° 20″, north latitude 42° 41″, about forty-five miles distant from Cape Sable, he fell in with His Britannic Majesty's sloop of war *Jaseur*, N. Lock, commander, who warned him off, and endorsed his enrolment and license in the words following:

"JUNE 19, 1815.

"Warned off the coast by His Majesty's sloop *Jaseur*, not to come within sixty miles.

"N. LOCK, *Captain.*"

In consequence of which, the fisherman immediately left the fishing ground, and returned home without completing his fare.

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The captain of the fisherman further states that all the fishing vessels then in sight were warned off in the same manner by the said Captain Lock.

I am, sir, very respectfully, your obedient servant,

ISAIAH L. GREEN, *Collector.*

Hon. A. J. DALLAS, Esq.

Mr. Monroe to Mr. Adams.

July 21, 1815.

Among the acts which we have to complain of with greatest earnestness is a late warning given by the commander of a British sloop of war to our fishermen near the coast of the British northern colonies to retire thence to the distance of twenty leagues. This, it is presumed, has been done under a construction of the late treaty of peace, which, by being silent on the subject, left that important interest to rest on the ground on which it was placed by the treaty of 1783. The right to the fisheries required no new stipulation to support it. It was sufficiently secured by the treaty of 1783. This important subject will claim your early attention. The measure thus promptly taken by the British Government, without any communication with this Government, notwithstanding the declaration of our ministers at Ghent that our right would not be affected by the silence of the treaty, indicates a spirit which excites equal surprise and regret—one which by no means corresponds with the amicable relations established between the two countries by that treaty, or with the spirit with which it has been executed by the United States.

As you are well acquainted with the solidity of our right to the fisheries in question, as well as to those on the Grand Bank, and elsewhere on the main ocean, to the limit of a marine league only from the coast, (for the pretension to remove us twenty leagues is too absurd to be discussed,) I shall not dilate on it, especially at this time. It is sufficient to observe here, that the right of the United States to take fish on the coast of Newfoundland, and on the coasts, bays and creeks of all other of His Britannic Majesty's dominions in America, and to dry and cure fish in any of the unsettled bays, harbors, and creeks of Nova Scotia, Magdalen islands, and Labrador—in short, that every right appertaining to the fisheries, which was secured by the treaty of 1783, stands now as unshaken and perfect as it then did, constituting a vital part of our political existence, and resting on the same solid foundation as our independence itself. In the act of dismemberment and partition, the rights of each party were distinctly defined. So much of territory and incidental rights were allotted to one, so much to the other; and as well might it be said, because our boundary had not been retraced in the late treaty, in every part, that certain portions of our territory had reverted to England, as that our right to fish, by whatever name secured, had experienced that fate. A liberty of unlimited duration, thus secured, is as much a right as if it had been stipulated by any other term. Being to be enjoyed by one, adjoining the territory allotted by the partition to the other party, it seemed to be the appropriate term. I have made these remarks to show the solid ground on which this

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right is deemed to rest by this Government, relying on your thorough knowledge of the subject to illustrate and support it in the most suitable manner.

It can scarcely be presumed that the British Government, after the result of the late experiment, in the present state of Europe, and under its other engagements, can seriously contemplate a renewal of hostilities. But it often happens with nations, as well as with individuals, that a just estimate of its interest and duties is not an infallible criterion of its conduct. We ought to be prepared at every point to guard against such an event. You will be attentive to circumstances, and give us timely notice of any danger which may be menaced.

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Mr. Baker to Mr. Monroe.

PHILADELPHIA, *August 31, 1815.*

SIR: I have the honor to acknowledge the receipt of your letter of the 18th ultimo, together with its enclosure, relating to the warning off, to the distance of sixty miles from the coast of Nova Scotia, of some American fishing vessels by His Majesty's brig *Jaseur*.

This measure was, as you have justly presumed in your note, totally unauthorized by His Majesty's Government; and I have the satisfaction to acquaint you that orders have been given by the naval commanders-in-chief on the Halifax and Newfoundland stations, which will effectually prevent the recurrence of any similar interruption to the vessels belonging to the United States engaged in fishing on the high seas.

I have the honor to be, with the greatest consideration and respect, sir, your most obedient, humble servant,

ANTHONY ST. J. BAKER.

Hon. JAMES MONROE, &c.

Mr. Adams to Mr. Monroe.

LONDON, *September 19, 1815.*

The transactions to which your instructions of 21st July have reference, were of a character to excite, in the highest degree, the attention of the Government of the United States. So many simultaneous acts of British officers, at various stations and upon both elements, indicating a marked spirit of hostility, were calculated to inspire serious doubts with regard to the pacific, not to say the amicable dispositions of the British Government; and the latter part of your despatch made it incumbent upon me, under certain contingencies, to take measures, of which nothing that had occurred here had induced me even to think, as precautions which the course of events might render expedient. The commercial convention had shown how excessively difficult it was for British and American plenipotentiaries to agree upon any one point in which the mutual interests of the two countries were involved. It had shown how very

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few points there were upon which any agreement could be made; and it was evident, from everything excepting the personal courtesies of the Prince and his cabinet, that the animosities of the condition from which the two nations had lately emerged had very little subsided. I had, however, before the receipt of your despatch, not a suspicion that an immediate renewal of hostilities was contemplated; and even now, although I perceive no reason for flattering myself that any satisfaction will be given us upon any one of our causes of complaint, yet I do not apprehend that any act of open and avowed hostility will be sanctioned by the British Government at the present moment. It must, however, be added, that the most, perhaps the only unequivocal pledge of pacific intentions is the reduction of the fleet, not only to a peace establishment, but to an unusually small one. Your despatch, and the several procedures to which it related, awakened an anxiety that nothing should be omitted which could be of any possible utility to our interests in this quarter.

Having formally renewed the claim for the restitution of the slaves carried away contrary to the engagements of the treaty of peace, or for payment of their value as the alternative, there were other objects which I deemed it necessary to present again to the consideration of this Government. In the first instance, it seemed advisable to open them by a verbal communication; and I requested of Lord Bathurst an interview, for which he appointed the 14th instant, when I called at his office in Downing street. I said that, having lately received despatches from you respecting several objects of some importance to the relations between the two countries, my first object in asking to see him had been to inquire whether he had received from Mr. Baker a communication of the correspondence between you and him relative to the surrender of the *Michilimackinac;* to the proceedings of Colonel Nichols in the southern part of the United States; and to the warning given by the captain of the British armed vessel *Jaseur* to certain American fishing vessels to withdraw from the fishing grounds to the distance of sixty miles from the coast. He answered, that he had received all these papers from Mr. Baker about four days ago; that an answer with regard to the warning of the fishing vessels had immediately been sent; but, on the other subjects, there had not been time to examine the papers and prepare the answers. I asked him if he could, without inconvenience, state the substance of the answer that had been sent. He said, certainly: it had been that as, on the one hand, Great Britain could not permit the vessels of the United States to fish within the creeks and close upon the shores of the British territories, so, on the other hand, it was by no means her intention to interrupt them in fishing anywhere in the open sea, or without the territorial jurisdiction, a marine league from the shore; and, therefore, that the warning given at the place stated, in the case referred to, was altogether unauthorized. I replied, that the particular act of the British commander in this instance, being disavowed, I trusted that the British Government, before adopting any final determination upon the subject, would estimate, in candor, and in that spirit of amity which my own Government was anxiously desirous of maintaining in our relations with this country, the considerations which I was instructed to present in support of the right of the people of the United States to fish on the whole coast of North America, which they have uniformly

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enjoyed from the first settlement of the country; that it was my intention to address, in the course of a few days, a letter to him on the subject. He said that they would give due attention to the letter that I should send him, but that Great Britain had explicitly manifested her intention concerning it; that this subject, as I doubtless knew, had excited a great deal of feeling in this country, perhaps much more than its importance deserved; but their own fishermen considered it as an excessive hardship to be supplanted by American fishermen, even upon the very shores of the British dominions. I said that those whose sensibilities had been thus excited had probably not considered the question of right in the point of view in which it had been regarded by us; that they were the sensibilities of a partial and individual interest, stimulated by the passions of competition, and considering the right of the Americans as if it had been a privilege granted to them by the British Government. If this interest was to have weight in determining the policy of the cabinet, there was another interest liable to be affected in the opposite manner, which would be entitled equally to consideration—the manufacturing interest. The question of right had not been discussed at the negotiation of Ghent. The British plenipotentiaries had given a notice that the British Government did not intend hereafter to grant to the people of the United States the right to fish, and to cure and dry fish within the exclusive British jurisdiction in America, without an equivalent, as it had been granted by the treaty of peace in 1783. The American plenipotentiaries had given notice, in return, that the American Government considered all the rights and liberties in and to the fisheries on the whole coast of North America as sufficiently secured by the possession of them, which had always been enjoyed previous to the revolution, and by the recognition of them in the treaty of peace in 1783; that they did not think any new stipulation necessary for a further confirmation of the right, no part of which did they consider as having been forfeited by the war. It was obvious that the treaty of peace of 1783 was not one of those ordinary treaties which, by the usages of nations, were held to be annulled by a subsequent war between the same parties; it was not simply a treaty of peace; it was a treaty of partition between two parts of one nation, agreeing thenceforth to be separated into two distinct sovereignties. The conditions upon which this was done constituted, essentially, the independence of the United States; and the preservation of all the fishing rights, which they had constantly enjoyed over the whole coast of North America, was among the most important of them. This was no concession, no grant, on the part of Great Britain, which could be annulled by a war. There had been, in the same treaty of 1783, a right recognized in British subjects to navigate the Mississippi. This right the British plenipotentiaries at Ghent had considered as still a just claim on the part of Great Britain, notwithstanding the war that had intervened. The American plenipotentiaries, to remove all future discussion upon both points, had offered to agree to an article expressly confirming both the rights. In declining this, an offer had been made on the part of Great Britain of an article stipulating to negotiate in future for the renewal of both the rights, for equivalents, which was declined by the American plenipotentiaries, on the express ground that its effect would have been an implied admission that the

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rights had been annulled. There was, therefore, no article concerning them in the treaty, and the question as to the right was not discussed. I now stated the ground upon which the Government of the United States considered the right as subsisting and unimpaired. The treaty of 1783 was, in its essential nature, not liable to be annulled by a subsequent war. It acknowledged the United States as a sovereign and independent Power. It would be an absurdity, inconsistent with the acknowledgment itself, to suppose it liable to be forfeited by a war. The whole treaty of Ghent did constantly refer to it as existing and in full force, nor was an intimation given that any further confirmation of it was supposed to be necessary. It would be for the British Government ultimately to determine how far this reasoning was to be admitted as correct. There were, also, considerations of policy and expediency, to which I hoped they would give suitable attention, before they should come to a final decision upon this point. I thought it my duty to suggest them, that they might not be overlooked. The subject was viewed by my countrymen as highly important, and I was anxious to omit no effort which might possibly have an influence in promoting friendly sentiments between the two nations, or in guarding against the excitement of others. These fisheries afforded the means of subsistence to multitudes of people who were destitute of any other; they also afforded the means of remittance to Great Britain in payment for articles of her manufactures exported to America. It was well understood to be the policy of Great Britain that no unnecessary stimulus should be given to the manufactures in the United States, which would diminish the importation of those from Great Britain. But, by depriving the fishermen of the United States of this source of subsistence, the result must be to throw them back upon the country, and drive them to the resort of manufacturing for themselves; while, on the other hand, it would cut off the means of making remittances in payment for the manufactures of Great Britain.

I thought it best to urge every consideration which might influence a party having other views in that respect, to avoid coming to a collision upon it. I would even urge considerations of humanity. I would say that fisheries, the nature of which was to multiply the means of subsistence to mankind, were usually considered by civilized nations as under a sort of special sanction. It was a common practice to have them uninterrupted even in time of war. He knew, for instance, that the Dutch had been, for centuries, in the practice of fishing upon the coasts of this island, and that they were not interrupted in this occupation even in ordinary times of war. It was to be inferred from this, that, to interdict a fishery, which has been enjoyed for ages, far from being a usual act in the peaceable relations between nations, was an indication of animosity, transcending even the ordinary course of hostility in war. He said that no such disposition was entertained by the British Government; that to show the liberality which they had determined to exercise in this case, he would assure me that the instructions which he had given to the officers on that station had been, not even to interrupt the American fishermen who might have proceeded to those coasts, within the British jurisdiction, for the present year; to allow them to complete their fares, but to give them notice that this privilege could no longer

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be allowed by Great Britain, and that they must not return the next year. It was not so much the fishing, as the drying and curing on the shores, that had been followed by bad consequences. It happened that our fishermen, by their proximity, could get to the fishing stations sooner in the season than the British, who were obliged to go from Europe, and who, upon arriving there, found all the best fishing places and drying and curing places pre-occupied. This had often given rise to disputes and quarrels between them, which in some instances had proceeded even to blows. It had disturbed the peace among the inhabitants on the shores; and, for several years before the war, the complaints to this Government had been so great and so frequent, that it had been impossible not to pay regard to them. I said that I had not heard of any such complaints before, but that as to the disputes arising from the competition of the fishermen, a remedy could surely with ease be found for them, by suitable regulations of the Government; and with regard to the peace of the inhabitants, there could be little difficulty in securing it, as the liberty enjoyed by the American fishermen was limited to unsettled and uninhabited places, unless they could, in the others, obtain the consent and agreement of the inhabitants.

The answer which was so promptly sent to the complaint relative to the warning of the fishing vessels by the captain of the *Jaseur*, will probably be communicated to you before you will receive this letter. You will see whether it is so precise, as to the limits within which they are determined to adhere to the exclusion of our fishing vessels, as Lord Bathurst's verbal statement of it to me, namely, to the extent of one marine league from their shores. Indeed, it is to the curing and drying upon the shore that they appear to have the strongest objection. But that, perhaps, is because they know that the immediate curing and drying of the fish, as soon as they are taken, is essential to the value, if not to the very prosecution of the fishery. I have no expectation that the arguments used by me either in support of our right, or as to the policy of Great Britain, upon this question, will have any weight here. Though satisfied of their validity myself, I am persuaded it will be upon the determination of the American Government and people to maintain the right that the continuance of its enjoyment will alone depend.

Mr. Adams to Lord Bathurst.

CHARLES STREET,
Westminister, September 25, 1815.

In the conference with your lordship, with which I was honored on the 14th instant, I represented to you, conformably to the instructions which I had received from the Government of the United States, the proceedings of several British officers in America, and upon the American coast, marked with characters incompatible not only with those amicable relations which it is the earnest desire of the American Government to restore and to cultivate, but even with the condition of peace which had been restored between the two countries by the treaty of Ghent.

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It was highly satisfactory to be informed that the conduct of Captain Lock, commander of the sloop of war *Jaseur*, in warning American fishing vessels not to come within sixty miles of the coast of His Majesty's possessions in North America, was unauthorized, and that the instructions to the British officers on that station, far from warranting such a procedure, had directed them not even to molest the American fishing vessels which might be found pursuing that occupation during the present year. In offering a just tribute of acknowledgment to the fairness and liberality of these instructions issued from your lordship's office, there only remained the regret that the execution had been so different from them in spirit, so opposite to them in effect.

But, in disavowing the particular act of the officer who had presumed to forbid American fishing vessels from approaching within sixty miles of the American coast, and in assuring me that it had been the intention of this Government, and the instructions given by your lordship, not even to deprive the American fishermen of any of their accustomed liberties during the present year, your lordship did also express it as the intention of the British Government to exclude the fishing vessels of the United States, hereafter, from the liberty of fishing within one marine league of the shores of all the British territories in North America, and from that of drying and curing their fish on the unsettled parts of those territories, and, with the consent of the inhabitants, on those parts which have become settled since the peace of 1783.

I then expressed to your lordship my earnest hope that this determination had not been irrevocably taken, and stated the instructions which I had received to present to the consideration of His Majesty's Government the grounds upon which the United States conceive those liberties to stand, and upon which they deem that such exclusion cannot be effected without an infraction of the rights of the American people.

In adverting to the origin of these liberties, it will be admitted, I presume, without question, that, from the time of the settlements in North America, which now constitute the United States, until their separation from Great Britain, and their establishment as distinct sovereignties, these liberties of fishing, and of drying and curing fish, had been enjoyed by them in common with the other subjects of the British empire. In point of principle, they were pre-eminently entitled to the enjoyment; and, in point of fact, they had enjoyed more of them than any other portion of the empire; their settlement of the neighboring country having naturally led to the discovery and improvement of these fisheries, and their proximity to the places where they are prosecuted; and the necessities of their condition having led them to the discovery of the most advantageous fishing grounds, and given them facilities in the pursuit of their occupation in those regions which the remoter parts of the empire could not possess. It might be added, that they had contributed their full share, and more than their share, in securing the conquest from France of the provinces on the coasts on which these fisheries were situated.

It was, doubtless, upon considerations such as these that, in the treaty of peace between His Majesty and the United States of 1783, an express stipulation was inserted, recognising the rights and liber-

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ties which had always been enjoyed by the people of the United States in these fisheries, and declaring that they should continue to enjoy the right of fishing on the Grand Bank, and other places of common jurisdiction, and have the liberty of fishing and of drying and curing their fish within the exclusive British jurisdiction on the North American coasts, to which they had been accustomed while themselves formed a part of the British nation. This stipulation was a part of that treaty by which His Majesty acknowledged the United States as free, sovereign, and independent States, and that he treated with them as such.

It cannot be necessary for me to prove, my lord, that that treaty is not, in its general provisions, one of those which, by the common understanding and usage of civilized nations, is or can be considered as annulled by a subsequent war between the same parties. To suppose that it is, would imply the inconsistency and absurdity of a sovereign and independent state, liable to forfeit its right of sovereignty, by the act of exercising it on a declaration of war. But the very words of the treaty attest that the sovereignty and independence of the United States were not considered or understood as grants from His Majesty. They were taken and expressed as existing before the treaty was made, and as then only first formally recognised and acknowledged by Great Britain.

Precisely of the same nature were the rights and liberties in the fisheries to which I now refer. They were, in no respect, grants from the King of Great Britain to the United States; but the acknowledgment of them as rights and liberties enjoyed before the separation of the two countries, and which it was mutually agreed should continue to be enjoyed under the new relations which were to subsist between them, constituted the essence of the article concerning the fisheries. The very peculiarity of the stipulation is an evidence that it was not, on either side, understood or intended as a grant from one sovereign state to another. Had it been so understood, neither could the United States have claimed, nor would Great Britain have granted, gratuitously, any such concession. There was nothing, either in the state of things, or in the disposition of the parties, which could have led to such a stipulation, as on the ground of a grant, without an equivalent, by Great Britain.

Yet such is the ground upon which it appears to have been contemplated as resting by the British Government, when their plenipotentiaries at Ghent communicated to those of the United States their intentions as to the North American fisheries, viz: "That the British Government did not intend to grant to the United States, gratuitously, the privileges formerly granted by treaty to them, of fishing within the limits of the British sovereignty, and of using the shores of the British territories for purposes connected with the British fisheries."

These are the words in which the notice, given by them, is recorded in the protocol of conference of the 8th of August, 1814. To this notice the American plenipotentiaries first answered, on the 9th of August, that they had no instructions from their Government to negotiate upon the subject of the fisheries; and afterwards, in their note of 10th November, 1814, they expressed themselves in the following terms:

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"In answer to the declaration made by the British plenipotentiaries respecting the fisheries, the undersigned, referring to what passed in the conference of the 9th of August, can only state that they are not authorized to bring into discussion any of the rights or liberties which the United States have heretofore enjoyed in relation thereto. From their nature, and from the peculiar character of the treaty of 1783, by which they were recognised, no further stipulation has been deemed necessary by the Government of the United States to entitle them to the full enjoyment of all of them."

If the stipulation of the treaty of 1783 was one of the conditions by which His Majesty acknowledged the sovereignty and independence of the United States; if it was the mere recognition of rights and liberties previously existing and enjoyed, it was neither a privilege gratuitously granted, nor liable to be forfeited by the mere existence of a subsequent war. If it was not forfeited by the war, neither could it be impaired by the declaration of Great Britain, that she did not intend to renew the grant. Where there had been no gratuitous concession, there could be none to renew; the rights and liberties of the United States could not be cancelled by the declaration of Great Britain's intentions. Nothing could abrogate them but the renunciation of them by the United States themselves.

Among the articles of that same treaty of 1783, there is one stipulating that the subjects and citizens of both nations shall enjoy forever, the right of navigating the river Mississippi, from its sources to the ocean. And although at the period of the negotiations of Ghent, Great Britain possessed no territory upon that river, yet the British plenipotentiaries, in their first note, considered Great Britain as still entitled to claim the free navigation of it, without offering for it any equivalent. And, afterwards, when offering a boundary line, which would have abandoned every pretension even to any future possession on that river, they still claimed, not only its free navigation, but a right of access to it, from the British dominions in North America, through the territories of the United States. The American plenipotentiaries, to foreclose the danger of any subsequent misunderstanding and discussion upon either of these points, proposed an article recognising anew the liberties on both sides. In declining to accept it, the British plenipotentiaries proposed an article engaging to negotiate, in future, for the renewal of both, for equivalents to be mutually granted. This was refused by the American plenipotentiaries, on the avowed principle that its acceptance would imply the admission on the part of the United States that their liberties in the fisheries, recognised by the treaty of 1783, had been annulled, which they declared themselves in no manner authorized to concede.

Let it be supposed, my lord, that the notice given by the British plenipotentiaries, in relation to the fisheries, had been in reference to another article of the same treaty; that Great Britain had declared she did not intend to grant again, gratuitously, the grant in a former treaty of peace, acknowledging the United States as free, sovereign, and independent States; or, that she did not intend to grant, gratuitously, the same boundary line which she had granted in the former treaty of peace: is it not obvious that the answer would have been that the United States needed no new acknowledgment of

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their independence, nor any new grant of a boundary line?—that, if their independence was to be forfeited, or their boundary line curtailed, it could only be by their own acts of renunciation, or of cession, and not by the declaration of the intentions of another Government? And, if this reasoning be just, with regard to the other articles of the treaty of 1783, upon what principle can Great Britain select one article, or a part of one article, and say, this particular stipulation is liable to forfeiture by war, or by the declaration of her will, while she admits the rest of the treaty to be permanent and irrevocable? In the negotiations of Ghent, Great Britain did propose several variations of the boundary line, but she never intimated that she considered the line of the treaty of 1783 as forfeited by the war, or that its variation could be effected by the mere declaration of her intentions. She perfectly understood that no alteration of that line could be effected but by the express assent of the United States; and, when she finally determined to abide by the same line, neither the British nor the American plenipotentiaries conceived that any new confirmation of it was necessary. The treaty of Ghent, in every one of its essential articles refers to that of 1783 as being still in full force. The object of all its articles, relative to the boundary, is to ascertain with more precision, and to carry into effect, the provisions of that prior compact. The treaty of 1783 is, by a tacit understanding between the parties, and without any positive stipulation, constantly referred to as the fundamental law of the relations between the two nations. Upon what ground, then, can Great Britain assume that one particular stipulation in that treaty is no longer binding upon her?

Upon this foundation, my lord, the Government of the United States consider the people thereof as fully entitled, of right to all the liberties in the North American fisheries which have always belonged to them; which, in the treaty of 1783, were, by Great Britain, recognised as belonging to them; and which they never have, by any act of theirs, consented to renounce. With these views, should Great Britain ultimately determine to deprive them of the enjoyment of these liberties by force, it is not for me to say whether, or for what length of time, they would submit to the bereavement of that which they would still hold to be their unquestionable right. It is my duty to hope that such measures will not be deemed necessary to be resorted to on the part of Great Britain; and to state that, if they should, they cannot impair the right of the people of the United States to the liberties in question, so long as no formal and express assent of theirs shall manifest their acquiescence in the privation.

In the interview with which your lordship recently favored me, I suggested several other considerations, with the hope of convincing your lordship that, independent of the question of rigorous right, it would conduce to the substantial interests of Great Britain herself, as well as to the observance of those principles of benevolence and humanity which it is the highest glory of a great and powerful nation to respect, to leave to the American fishermen the participation of those benefits which the bounty of nature has thus spread before them; which are so necessary to their comfort and subsistence; which they have constantly enjoyed hitherto; and which, far from operating as an injury to Great Britain, had the ultimate result of pouring into

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her lap a great portion of the profits of their hardy and laborious industry; that these fisheries afforded the means of subsistence to a numerous class of people in the United States, whose habit of life had been fashioned to no other occupation, and whose fortunes had allotted them no other possession; that to another, and, perhaps, equally numerous class of our citizens, they afforded the means of remittance and payment for the productions of British industry and ingenuity, imported from the manufactures of this united kingdom; that, by the common and received usages among civilized nations, fishermen were among those classes of human society whose occupations, contributing to the general benefit and welfare of the species, were entitled to a more than ordinary share of protection; that it was usual to spare and exempt them even from the most exasperated conflicts of national hostility; that this nation had, for ages, permitted the fishermen of another country to frequent and fish upon the coasts of this island, without interrupting them, even in times of ordinary war; that the resort of American fishermen to the barren, uninhabited, and, for the great part, uninhabitable rocks on the coasts of Nova Scotia, the Gulf of St. Lawrence, and Labrador, to use them occasionally for the only purposes of utility of which they are susceptible, if it must, in its nature, subject British fishermen on the same coasts to the partial inconvenience of a fair competition, yet produces, in its results, advantages to other British interests equally entitled to the regard and fostering care of their sovereign. By attributing to motives derived from such sources as these the recognition of these liberties by His Majesty's Government in the treaty of 1783, it would be traced to an origin certainly more conformable to the fact, and surely more honorable to Great Britain, than by ascribing it to the improvident grant of an unrequited privilege, or to a concession extorted from the humiliating compliance of necessity.

In repeating, with earnestness, all these suggestions, it is with the hope that from some, or all of them, His Majesty's Government will conclude the justice and expediency of leaving the North American fisheries in the state in which they have heretofore constantly existed, and the fishermen of the United States unmolested in the enjoyment of their liberties.

I have, etc. JOHN QUINCY ADAMS.

Lord Bathurst to Mr. Adams.

FOREIGN OFFICE, *October 30, 1815.*

The undersigned, one of His Majesty's principal Secretaries of State, had the honor of receiving the letter of the minister of the United States, dated the 25th ultimo, containing the grounds upon which the United States conceive themselves, at the present time, entitled to prosecute their fisheries within the limits of the British sovereignty, and to use British territories for purposes connected with the fisheries.

A pretension of this kind was certainly intimated on a former occasion, but in a manner so obscure that His Majesty's Government were not enabled even to conjecture the grounds upon which it could be supported.

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His Majesty's Government have not failed to give to the argument contained in the letter of the 25th ultimo a candid and deliberate consideration; and, although they are compelled to resist the claim of the United States, when thus brought forward as a question of right, they feel every disposition to afford to the citizens of those States, all the liberties and privileges connected with the fisheries which can consist with the just rights and interests of Great Britain, and secure His Majesty's subjects from those undue molestations in their fisheries which they have formerly experienced from citizens of the United States. The minister of the United States appears, by his letter, to be well aware that Great Britain has always considered the liberty formerly enjoyed by the United States of fishing within British limits, and using British territory, as derived from the third article of the treaty of 1783, and from that alone; and that the claim of an independent state to occupy and use at its discretion any portion of the territory of another, without compensation or corresponding indulgence, cannot rest on any other foundation than conventional stipulation. It is unnecessary to inquire into the motives which might have originally influenced Great Britain in conceding such liberties to the United States, or whether other articles of the treaty wherein these liberties are specified did, or did not, in fact, afford an equivalent for them, because all the stipulations profess to be founded on reciprocal advantages and mutual convenience. If the United States derived from that treaty privileges from which other independent nations, not admitted by treaty were excluded, the duration of the privileges must depend on the duration of the instrument by which they were granted; and if the war abrogated the treaty, it determined the privileges. It has been urged, indeed, on the part of the United States, that the treaty of 1783 was of a peculiar character, and that, because, it contained a recognition of American independence, it could not be abrogated by a subsequent war between the parties. To a position of this novel nature Great Britain cannot accede. She knows of no exception to the rule, that all treaties are put an end to by a subsequent war between the same parties; she cannot, therefore, consent to give to her diplomatic relations with one state a different degree of permanency from that on which her connexion with all other states depends. Nor can she consider any one state at liberty to assign to a treaty made with her such a peculiarity of character as shall make it, as to duration, an exception to all other treaties, in order to found, on a peculiarity thus assumed, an irrevocable title to all indulgences, which have all the features of temporary concessions.

The treaty of Ghent has been brought forward by the American minister as supporting, by its reference to the boundary line of the United States, as fixed by the treaty of 1783, the opinion that the treaty of 1783 was not abrogated by the war. The undersigned, however, cannot observe in any one of its articles any express or implied reference to the treaty of 1783 as still in force. It will not be denied that the main object of the treaty of Ghent was the mutual restoration of all territory taken by either party from the other during the war. As a necessary consequence of such a stipulation, each party reverted to their boundaries as before the war, without reference to the title by which these possessions were acquired, or to the mode in which their boundaries had been previously fixed. In point of fact, the

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United States had before acquired possession of territories asserted to depend on other titles than those which Great Britain could confer. The treaty of Ghent, indeed, adverted, as a fact of possession, to certain boundaries of the United States which were specified in the treaty of 1783; but surely it will not be contended that therefore the treaty of 1783 was not considered at an end.

It is justly stated by the American minister that the United States did not need a new grant of the boundary line. The war did not arise out of a contested boundary; and Great Britain, therefore, by the act of treating with the United States recognised that nation in its former dimensions, excepting so far as the *jus belli* had interfered with them; and it was the object of the treaty of Ghent to cede such rights to territory as the *jus belli* had conferred.

Still less does the free navigation of the Mississippi, as demanded by the British negotiators at Ghent, in any manner express or imply the non-abrogation of the treaty of 1783 by the subsequent war. It was brought forward by them as one of many advantages which they were desirous of securing to Great Britain; and if in the first instances demanded without equivalent, it left it open to the negotiators of the United States to claim for their Government in the course of their conferences, a corresponding benefit. The American minister will recollect that propositions of this nature were at one time under discussion, and that they were only abandoned at the time that Great Britain relinquished her demand to the navigation of the Mississippi. If, then, the demand on the part of Great Britain can be supposed to have given any weight to the present argument of the United States, the abandonment of that demand must have effectually removed it.

It is by no means unusual for treaties containing recognitions and acknowledgments of title, in the nature of perpetual obligation, to contain, likewise, grants of privileges liable to revocation. The treaty of 1783, like many others, contained provisions of different characters—some in their own nature irrevocable, and others of a temporary nature. If it be thence inferred that, because some advantages specified in that treaty would not be put an end to by the war, therefore all the other advantages were intended to be equally permanent, it must first be shown that the advantages themselves are of the same, or at least of a similar character; for the character of one advantage recognised or conceded by treaty can have no connexion with the character of another, though conceded by the same instrument, unless it arises out of a strict and necessary connexion between the advantages themselves. But what necessary connexion can there be between a right to independence and a liberty to fish within British jurisdiction, or to use British territory? Liberties within British limits are as capable of being exercised by a dependent, as by an independent state, and cannot, therefore, be the necessary consequence of independence.

The independence of a state is that which cannot be correctly said to be granted by a treaty, but to be acknowledged by one. In the treaty of 1783, the independence of the United States was certainly acknowledged, not merely by the consent to make the treaty, but by the previous consent to enter into the provisional articles executed in November 1782. The independence might have been acknowledged, without either the treaty or the provisional articles; but, by whatever

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mode acknowledged the acknowledgment is, in its own nature, irrevocable. A power of revoking, or even of modifying it, would be destructive of the thing itself; and, therefore, all such power is necessarily renounced when the acknowledgment is made. The war could not put an end to it, for the reason justly assigned by the American minister, because a nation could not forfeit its sovereignty by the act of exercising it; and for the further reason, that Great Britain, when she declared war on her part against the United States, gave them, by that very act, a new recognition of their independence.

The nature of the liberty to fish within British limits, or to use British territory, is essentially different from the right to independence, in all that may reasonably be supposed to regard its intended duration. The grant of this liberty has all the aspect of a policy temporary and experimental, depending on the use that might be made of it, on the condition of the islands and places where it was to be exercised, and the more general conveniences or inconveniences, in a military, naval, or commercial point of view, resulting from the access of an independent nation to such islands and places.

When, therefore, Great Britain, admitting the independence of the United States, denies their right to the liberties for which they now contend, it is not that she selects from the treaty, articles, or parts of articles, and says, at her own will, this stipulation is liable to forfeiture by war, and that it is irrevocable; but the principle of her reasoning is, that such distinctions arise out of the provisions themselves, and are founded on the very nature of the grants. But the rights acknowledged by the treaty of 1783 are not only distinguishable from the liberties conceded by the same treaty, in the foundation upon which they stand, but they are carefully distinguished in the treaty of 1783 itself. The undersigned begs to call the attention of the American minister to the wording of the first and third articles, to which he has often referred, for the foundation of his arguments. In the first article, Great Britain acknowledges an independence already expressly recognised by the Powers of Europe, and by herself, in her consent to enter into provisional articles, of November, 1782. In the third article, Great Britain acknowledges the *right* of the United States to take fish on the Banks of Newfoundland and other places, from which Great Britain has no right to exclude an independent nation. But they are to have the *liberty* to cure and dry them in certain unsettled places within His Majesty's territory. If these liberties, thus granted, were to be as perpetual and indefeasible as the rights previously recognised, it is difficult to conceive that the plenipotentiaries of the United States would have admitted a variation of language so adapted to produce a different impression; and, above all, that they should have admitted so strange a restriction of a perpetual and indefeasible right as that with which the article concludes, which leaves a right so practical and so beneficial as this is admitted to be, dependant on the will of British subjects in their character of inhabitants, proprietors or possessors of the soil, to prohibit its exercise altogether.

It is surely obvious that the word *right* is, throughout the treaty, used as applicable to what the United States were to enjoy, in virtue of a recognised independence; and the word *liberty* to what they were to enjoy, as concessions strictly dependant on the treaty itself.

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The right of the United States has been asserted upon other arguments, which appear to the undersigned not altogether consistent with those that had been previously advanced. It has been argued by the minister of the United States, that the treaty of 1783 did not confer upon the United States the liberty of fishing within British jurisdiction and using British territory; but merely recognised a right which they previously had; and it has been thence inferred that the recognition of this right renders it as perpetual as that of their independence.

If the treaty of 1783 did not confer the liberties in question, the undersigned cannot understand why, in their support, the point should have been so much pressed, that the treaty is in force notwithstanding the subsequent war. If, as stated by the American minister, the time of the settlement of North America was the origin of the liberties of the United States in respect to the fisheries, and their independence, as recognized in 1783, was, as further argued by him, the mere recognition of rights and liberties previously existing, (which must have been in virtue of their independence,) it would seem to follow that their independence was recognized from the time of the settlement of North America—for no other period can be assigned. The undersigned is totally unable to collect when the American minister considers the independence of his country to have commenced; yet this is a point of no small importance, if other rights are to be represented as coeval with it, or dependant on it.

As to the origin of these privileges, in point of fact, the undersigned is ready to admit that, so long as the United States constituted a part of the dominions of His Majesty, the inhabitants had the enjoyment of them, as they had of other political and commercial advantages, in common with His Majesty's subjects. But they had, at the same time, in common with His Majesty's other subjects, duties to perform; and when the United States, by their separation from Great Britain, became released from the duties, they became excluded also from the advantages of British subjects. They cannot, therefore, now claim, otherwise than by treaty, the exercise of privileges belonging to them as British subjects, unless they are prepared to admit, on the part of Great Britain, the exercise of the rights which she enjoyed previous to the separation.

If it be contended, on the part of the United States, that, in consequence of having been once a part of the British dominions, they are now entitled, as of right, to all the privileges which they enjoyed as British subjects, in addition to those which they have as an independent people, the undersigned cannot too strongly protest against such a doctrine; and it must become doubly necessary for Great Britain to hesitate in conceding the privileges which are now the subject of discussion, lest, by such a concession, she should be supposed to countenance a principle not less novel than alarming.

But, though Great Britain can never admit the claim of the United States to enjoy those liberties with respect to the fisheries, as matter of right, she is by no means insensible to some of those considerations with which the letter of the American minister concludes.

Although His Majesty's Government cannot admit that the claim of the American fishermen to fish within British jurisdiction, *and* to use the British territory for purposes connected with their fishery,

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is analogous to the indulgence which has been granted to enemy's subjects engaged in fishing on the high seas, for the purpose of conveying fresh fish to market, yet they do feel that the enjoyment of the liberties, formerly used by the inhabitants of the United States, may be very conducive to their national and individual prosperity, though they should be placed under some modifications; and this feeling operates most forcibly in favor of concession. But Great Britain can only offer the concession in a way which shall effectually protect her own subjects from such obstructions to their lawful enterprises as they too frequently experienced immediately previous to the late war, and which are, from their very nature, calculated to produce collision and disunion between the two states.

It was not of fair competition that His Majesty's Government had reason to complain, but of the preoccupation of British harbors and creeks, in North America, by the fishing vessels of the United States, and the forcible exclusion of British vessels from places where the fishery might be most advantageously conducted. They had, likewise, reason to complain of the clandestine introduction of prohibited goods into the British colonies by American vessels ostensibly engaged in the fishing trade, to the great injury of the British revenue.

The undersigned has felt it incumbent on him thus generally to notice these obstructions, in the hope that the attention of the Government of the United States will be directed to the subject; and that they may be induced, amicably and cordially, to co-operate with His Majesty's Government in devising such regulations as shall prevent the recurrence of similar inconveniences.

His Majesty's Government are willing to enter into negotiations with the Government of the United States for the modified renewal of the liberties in question; and they doubt not that an arrangement may be made satisfactory to both countries, and tending to confirm the amity now so happily subsisting between them.

The undersigned avails himself of this opportunity of renewing to Mr. Adams the assurances of his high consideration.

BATHURST.

Mr. Adams to Mr. Monroe.

LONDON, *November 8, 1815.*

SIR: Since I had the honor of writing you last, on the 31st ultimo, I have received from Lord Bathurst a note in answer to my letter to him relating to the fisheries; a copy of which is herewith enclosed. I hope shortly to reply to this note, and perceive nothing in it which can render the rights of the United States to the participation in the fisheries in any manner dubious.

It will be for the Government of the United States to determine whether the negotiation proposed by Lord Bathurst will be advisable; and I pray to be honored with the President's instructions on the subject as soon as possible.

I am, with great respect, sir, your very obedient, humble servant,

JOHN QUINCY ADAMS.

Hon. JAMES MONROE, &c.

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Mr. Adams to Lord Castlereagh.

13 CRAVEN STREET, *January 22, 1816.*

The undersigned, envoy extraordinary and minister plenipotentiary from the United States of America, has received, and communicated to the Government of the United States, the answer of Lord Bathurst to a letter which he had the honor of addressing to his lordship on the 25th of September last, representing the grounds upon which the American Government consider the people of the United States entitled to all the rights and liberties in and connected with the fisheries on the coasts of North America, which had been enjoyed by them previously to the American revolution, and which, by the third article of the treaty of peace of 1783, were recognized by Great Britain as rights and liberties belonging to them. The reply to Lord Bathurst's note has been delayed by circumstances which it is unnecessary to detail. It is for the Government of the United States alone to decide upon the proposal of a negotiation upon the subject. That they will at all times be ready to agree upon arrangements which may obviate and prevent the recurrence of those inconveniences stated to have resulted from the exercise by the people of the United States of these rights and liberties, is not to be doubted; but as Lord Bathurst appears to have understood some of the observations in the letter of the undersigned as importing inferences not intended by him, and as some of his lordship's remarks particularly require a reply, it is presumed that since Lord Castlereagh's return, it will, with propriety, be addressed to him.

It had been stated, in the letter to Lord Bathurst, that the treaty of peace of 1783 between Great Britain and the United States was of a peculiar nature, and bore in that nature a character of permanency, not subject, like many of the ordinary contracts between independent nations, to abrogation by a subsequent war between the same parties. His lordship not only considers this as a position of a novel nature, to which Great Britain cannot accede, but as claiming for the diplomatic relations of the United States with her a different degree of permanency from that on which her connexions with all other States depend. He denies the right of *any one state* to assign to a treaty made with her such a peculiarity of character as to make it in duration an exception to all other treaties, in order to found on a peculiarity thus assumed an irrevocable title to all indulgences which (he alleges) have all the features of temporary concessions; and he adds, in unqualified terms, that "Great Britain *knows of no exception* to the rule that all treaties are *put an end to* by a subsequent war between the same parties."

The undersigned explicitly disavows every pretence of claiming, for the diplomatic relations between the United States and Great Britain, a degree of permanency different from that of the same relations between either of the parties and all other Powers. He disclaims all pretence of assigning to any treaty between the two nations any peculiarity not founded in the nature of the treaty itself. But he submits to the candor of His Majesty's Government whether the treaty of 1783 was not, from the very nature of its subject-matter, and from the relations previously existing between the parties to it, peculiar? Whether it was a treaty which could have been made between Great

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Britain and any other nation? and, if not, whether the whole scope and objects of its stipulations were not expressly intended to constitute a new and *permanent* state of diplomatic relations between the two countries, which would not, and could not, be annulled by the mere fact of a subsequent war between them? And he makes this appeal with the more confidence, because another part of Lord Bathurst's note admits that treaties often contain recognitions and acknowledgments in the nature of perpetual obligation, and because it implicitly admits that the whole treaty of 1783 is of this character, with the exception of the article concerning the navigation of the Mississippi, and a small part of the article concerning the fisheries.

The position that "Great Britain *knows of no exception* to the rule that all treaties are *put an end to* by a subsequent war between the same parties," appears to the undersigned not only novel, but unwarranted by any of the received authorities upon the laws of nations; unsanctioned by the practice and usages of sovereign states; suited, in its tendency, to multiply the incitements to war, and to weaken the ties of peace between independent nations; and not easily reconciled with the admission that treaties not unusually contain, together with articles of a temporary character, liable to revocation, recognitions and acknowledgments *in the nature of perpetual obligation.*

A recognition or acknowledgment of title, stipulated by convention, is as much a part of the treaty as any other article; and if all treaties are abrogated by war, the recognitions and acknowledgments contained in them must necessarily be null and void, as much as any other part of the treaty.

If there be no exception to the rule that war puts an end to all treaties between the parties to it, what can be the purpose or meaning of those articles which, in almost all treaties of commerce, are provided expressly for the contingency of war, and which, during the peace, are without operation? On this point, the undersigned would refer Lord Castlereagh to the tenth article of the treaty of 1794 between the United States and Great Britain, where it is thus stipulated: "Neither the debts due from individuals of the one nation to the individuals of the other, nor shares, nor moneys, which they may have in the public funds, or in the public or private banks, shall ever, *in any event of war*, or national differences, be sequestered or confiscated." If war puts an end to all treaties, what could the parties to this engagement intend by making it formally an article of the treaty? According to the principle laid down, excluding all exception, by Lord Bathurst's note, the moment a war broke out between the countries this stipulation became a dead letter, and either state might have sequestered or confiscated those specified properties, without any violation of compact between the nations.

The undersigned believes that there are many exceptions to the rule by which the treaties between nations are mutually considered as terminated by the intervention of a war; that these exceptions extend to all engagements contracted with the understanding that they are to operate equally in war and peace, or exclusively during war; to all engagements by which the parties superadd the sanction of a formal compact to principles dictated by the eternal laws of morality and humanity; and, finally, to all engagements which, ac-

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cording to the expressions of Lord Bathurst's note, are *in the nature of perpetual obligation*. To the first and second of these classes may be referred the tenth article of the treaty of 1794, and all treaties or articles of treaties stipulating the abolition of the slave trade. The treaty of peace of 1783 belongs to the third.

The reasoning of Lord Bathurst's note seems to confine this perpetuity of obligation to *recognitions* and acknowledgments of title, and to consider its perpetual nature as resulting from the subject-matter of the contract, and not from the engagement of the contractor. While Great Britain leaves the United States unmolested in the enjoyment of all the advantages, rights, and liberties stipulated in their behalf in the treaty of 1783, it is immaterial to them whether she founds her conduct upon the mere fact that the United States are in possession of such rights, or whether she is governed by good faith and respect for her own engagements. But if she contests any one of them, it is to her engagements only that the United States can appeal as the rule for settling the question of right. If this appeal be rejected, it ceases to be a discussion of right; and this observation applies as strongly to the recognition of independence, and to the boundary line in the treaty of 1783, as to the fisheries. It is truly observed by Lord Bathurst, that in that treaty the independence of the United States was not granted, but acknowledged. He adds, that it might have been acknowledged without any treaty, and that the acknowledgment, in whatever mode made, would have been irrevocable. But the independence of the United States was precisely the question upon which a previous war between them and Great Britain had been waged. Other nations might acknowledge their independence without a treaty, because they had no right, or claim of right, to contest it; but this acknowledgment, to be binding upon Great Britain, could have been made only by treaty, because it included the dissolution of one social compact between the parties, as well as the formation of another. Peace could exist between the two nations only by the mutual pledge of faith to the new social relations established between them; and hence it was that the stipulations of that treaty were in the nature of perpetual obligation, and not liable to be forfeited by a subsequent war, or by any declaration of the will of either party without the assent of the other.

In this view, it certainly was supposed by the undersigned that Great Britain considered her *obligation* to hold and treat with the United States as a sovereign and independent Power as derived *only* from the preliminary articles of 1782, as converted into the definite treaty of 1783. The boundary line could obviously rest upon no other foundation. The boundaries were neither recognitions nor acknowledgments of title. They could have been fixed and settled only by treaty, and it is to the treaty alone that both parties have always referred in all discussions concerning them. Lord Bathurst's note denies that there is in any one of the articles of the treaty of Ghent any express or implied reference to the treaty of 1783, as still in force. It says that, by the stipulation for a mutual restoration of territory, each party necessarily "reverted to their boundaries as before the war, without reference to the title by which their possessions were acquired, or to the mode in which their boundaries had been previously fixed."

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There are four several articles of the treaty of Ghent, in every one of which the treaty of 1783 is not only named, but its stipulations form the basis of the new engagements between the parties for carrying its provisions into execution. These articles are the fourth, fifth, sixth, and seventh. The undersigned refers particularly to the fourth article, where the boundaries described are not adverted to without reference to the title by which they were acquired; but where the *stipulation* of the treaty of 1783 is expressly assigned as the basis of the claims, both of the United States and of Great Britain, to the islands mentioned in the article.

The words with which the article begins are, "*Whereas it was stipulated* by the second article in the treaty of peace of one thousand seven hundred and eighty-three, between His Britannic Majesty and the United States of America, that the boundary of the United States should comprehend all islands," &c.

It proceeds to describe the boundaries as there stipulated; then alleges the claim of the United States to certain islands, as founded upon one part of the stipulation, and the claim of Great Britain as derived from another part of the stipulation; and agrees upon the appointment of two commissioners "to decide to which of the two contracting parties the islands belong, *in conformity with the true intent of the said treaty of peace of* 1783." The same expressions are repeated in the fifth, sixth, and seventh articles; and the undersigned is unable to conceive by what construction of language one of the parties to those articles can allege that, at the time when they were signed, the treaty of 1783 was, or could be considered at an end.

When, in the letter of the undersigned to Lord Bathurst, the treaty of 1783 was stated to be a compact of a peculiar character, importing in its own nature a permanence not liable to be annulled by the fact of a subsequent war between the parties, the recognition of the sovereignty of the United States and the boundary line were adduced as illustrations to support the principle; the language of the abovementioned articles in the treaty of Ghent, and the claim brought forward by Great Britain, at the negotiation of it, for the free navigation of the Mississippi, were alleged as proofs that Great Britain, herself so considered it, excepting with regard to a small part of the single article relative to the fisheries; and the right of Great Britain was denied thus to select one particular stipulation in such a treaty, and declare it to have been abrogated by the war. The answer of Lord Bathurst denies that Great Britain has made such a selection, and affirms that the whole treaty of 1783 was annulled by the late war. It admits, however, that the recognition of independence and the boundaries was in the nature of a perpetual obligation; and that, with the single exception of the liberties in and connected with the fisheries within British jurisdiction on the coasts of North America, the United States are entitled to all the benefits of all the stipulations in their favor contained in the treaty of 1783, although the stipulations themselves are supposed to be annulled. The fishing liberties within British jurisdiction alone are considered as a temporary grant, liable not only to abrogation by war, but, as it would seem from the tenor of the argument, revocable at the pleasure of Great Britain, whenever she might consider the revocation suitable to her interest. The note affirms that "the liberty to fish within

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British limits, or to use British territory, is essentially different from the right to independence in all that can reasonably be supposed to regard its intended duration; that the grant of this liberty has all the aspect of a policy, *temporary and experimental*, depending on the use that might be made of it, on the condition of the islands and places where it was to be exercised, and the more general conveniences or inconveniences, in a military, naval, or commercial point of view, resulting from the access of an independent nation to such islands and places."

The undersigned is induced, on this occasion, to repeat his lordships's own words, because, on a careful and deliberate review of the article in question, he is unable to discover in it a single expression indicating, even in the most distant manner, a policy; temporary or experimental, or having the remotest connexion with military, naval or commercial conveniences or inconveniences to Great Britain. He has not been inattentive to the variation in the terms, by which the enjoyment of the fisheries on the main ocean, the common possession of both nations, and the same enjoyment within a small portion of the special jurisdiction of Great Britain, are stipulated in the article, and recognised as belonging to the people of the United States. He considers the term *right* as importing an advantage to be enjoyed in a place of common jurisdiction, and the term *liberty* as referring to the same advantage, incidentally leading to the borders of a special jurisdiction. But, evidently, neither of them imports any limitation of time. Both were expressions no less familiar to the understandings than dear to the hearts of both the nations parties to the treaty. The undersigned is persuaded it will be readily admitted that, wherever the English language is the mother tongue, the term *liberty*, far from including in itself either limitation of time or precariousness of tenure, is essentially as permanent as that of *right*, and can, with justice, be understood only as a modification of the same thing; and as no limitation of time is implied in the term itself, so there is none expressed in any part of the article to which it belongs. The restriction at the close of the article is itself a confirmation of the permanency which the undersigned contends belongs to every part of the article. The intention was, that the people of the United States should continue to enjoy all the benefits of the fisheries which they had enjoyed theretofore, and, with the exception of drying and curing fish on the island of Newfoundland, all that *British* subjects should enjoy thereafter. Among them, was the liberty of drying and curing fish on the shores, then uninhabited, adjoining certain bays, harbors, and creeks. But, when those shores should become settled, and thereby become private and individual property, it was obvious that the liberty of drying and curing fish upon them must be conciliated with the proprietary rights of the owners of the soil. The same restriction would apply to British fishermen; and it was precisely because no grant of a new right was intended, but merely the continuance of what had been previously enjoyed, that the restriction must have been assented to on the part of the United States. But, upon the common and equitable rule of construction for treaties, the expression of one restriction implies the exclusion of all others not expressed; and thus the very limitation which looks forward to the time when the unsettled deserts should become inhabited, to modify

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the enjoyment of the same liberty conformably to the change of circumstances, corroborates the conclusion that the whole purport of the compact was permanent and not temporary—not experimental, but definitive.

That the term *right* was used as applicable to what the United States were to enjoy in virtue of a recognised independence, and the word *liberty* to what they were to enjoy as *concessions* strictly dependant on the treaty itself, the undersigned not only cannot admit, but considers as a construction altogether unfounded. If the United States would have been entitled, *in virtue of a recognised independence*, to enjoy the fisheries to which the word *rights* is applied, no article upon the subject would have been required in the treaty. Whatever their right might have been, Great Britain would not have felt herself bound, without a specific article to that effect, to acknowledge it as included among the appendages to their independence. Had she not acknowledged it, the United States must have been reduced to the alternative of resigning it, or of maintaining it by force; the result of which must have been *war*—the very state from which the treaty was to redeem the parties. That Great Britain would not have acknowledged these rights as belonging to the United States in virtue of their independence, is evident; for, in the cession of Nova Scotia by France to Great Britain, in the twelfth article of the treaty of Utrecht, it was expressly stipulated that, as a consequence of that cession, French subjects should be thenceforth "excluded from all kind of fishing in the said seas, bays, and other places on the coasts of Nova Scotia; that is to say, on those which lie towards the east, within thirty leagues, beginning from the island commonly called Sable, inclusively, and thence stretching along towards the southwest." The same exclusion was repeated, with some slight variation, in the treaty of peace of 1763; and, in the eighteenth article of the same treaty, Spain explicitly renounced all pretensions to the right of fishing "in the neighborhood of the island of Newfoundland." It was not, therefore, as a necessary result of their independence that Great Britain recognised the *right* of the people of the United States to fish on the Banks of Newfoundland, in the "Gulf of St. Lawrence" and at all other places in the sea where "the inhabitants of both countries used, at any time theretofore, to fish." She recognised it, by a special stipulation, as a right which they had theretofore enjoyed as a part of the British nation, and which, as an independent nation, they were to continue to enjoy *unmolested;* and it is well known that, so far from considering it as recognised by virtue of her acknowledgment of independence, her objections to admitting it at all formed one of the most prominent difficulties in the negotiation of the peace of 1783. It was not asserted by the undersigned, as Lord Bathurst's note appears to suppose, that either the right or the liberty of the people of the United States in these fisheries was *indefeasible.* It was maintained that, after the recognition of them by Great Britain, in the treaty of 1783, neither the right nor the liberty could be forfeited by the United States, but by their own consent; that no act or declaration of Great Britain alone could divest the United States of them; and that no exclusion of them from the enjoyment of either could be valid, unless expressly stipulated by themselves, as was done by France in the treaty of Utrecht, and by France and Spain in the peace of 1763.

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The undersigned is apprehensive, from the earnestness with which Lord Bathurst's note argues to refute inferences which he disclaims, from the principles asserted in his letter to his lordship, that he has not expressed his meaning in terms sufficiently clear. He affirmed that previous to the independence of the United States, their people, as British subjects, had enjoyed all the rights and liberties in the fisheries, which form the subject of the present discussion; and that, when the separation of the two parts of the nation was consummated, by a mutual compact, the treaty of peace defined the rights and liberties which, by the stipulation of both parties, the United States, in their new character, were to enjoy. By the acknowledgment of the independence of the United States, Great Britain bound herself to treat them, thenceforward, as a nation possessed of all the prerogatives and attributes of sovereign power. The people of the United States were, thenceforward, neither bound in allegiance to the sovereign of Great Britain, nor entitled to his protection, in the enjoyment of any of their rights, as his subjects. Their rights and their duties, as members of a state, were defined and regulated by their own constitutions and forms of government. But there were certain rights and liberties which had been enjoyed by both parts of the nation, while subjects of the same sovereign, which it was mutually agreed they should continue to enjoy *unmolested*, and among them, were the rights and liberties in these fisheries. The fisheries on the Banks of Newfoundland, as well in the open seas as in the neighboring bays, gulfs, and along the coasts of Nova Scotia and Labrador, were, by the dispensations and the laws of nature, in substance, only different parts of one fishery. Those of the open sea were enjoyed not as a common and universal right of all nations; since the exclusion from them of France and Spain, in whole or in part, had been expressly stipulated by those nations, and no other nation, had, in fact, participated in them. It was, with some exceptions, an exclusive possession of the British nation; and in the treaty of separation it was agreed that the rights and liberties in them should continue to be enjoyed by that part of the nation which constituted the United States; that it should not be a several, but, as between Great Britain and the United States, a common fishery. It was necessary, for the enjoyment of this fishery, to exercise it in conformity to the habits of the species of game of which it consisted. The places frequented by the fish were those to which the fishermen were obliged to resort, and these occasionally brought them to the borders of the British territorial jurisdiction. It was also necessary, for the prosecution of a part of this fishery, that the fish, when caught, should be immediately cured and dried, which could only be done on the rocks or shores adjoining the places where they were caught; the access to these rocks and shores, for those purposes, was secured to the people of the United States, as incidental and necessary to the enjoyment of the fishery; it was little more than an access to naked rocks and desolate sands; but it was as permanently secured as the right to the fishery itself. No limitation was assigned of time. Provision was made for the proprietary rights which might at a distant and future period arise by the settlement of places then uninhabited; but no other limitation was expressed or indicated by the

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terms of the treaty, and no other can, either from the letter or spirit of the article, be inferred.

Far, then, from claiming the general rights and privileges belonging to British subjects within the British dominions, as resulting from the treaty of peace of 1783, while, at the same time, asserting their exemption from the duties of a British allegiance, the article in question is itself a proof that the people of the United States have renounced all such claims. Could they have pretended generally to the privileges of British subjects, such an article as that relating to the fisheries would have been absurd. There was in the treaty of 1783 no express renunciation of their rights to the protection of a British sovereign. This renunciation they had made by their Declaration of Independence on the 4th of July, 1776; and it was implied in their acceptance of the counter-renunciation of sovereignty in the treaty of 1783. It was precisely because they might have lost their portion of this joint national property, to the acquisition of which they had contributed more than their share, unless a formal article of the treaty should secure it to them, that the article was introduced. By the British municipal laws, which were the laws of both nations, the property of a fishery is not necessarily in the proprietor of the soil where it is situated. The soil may belong to one individual, and the fishery to another. The right to the soil may be exclusive, while the fishery may be free or held in common. And thus, while in the partition of the national possessions in North America, stipulated by the treaty of 1783, the jurisdiction over the shores washed by the waters where this fishery was placed was reserved to Great Britain, the fisheries themselves, and the accommodations essential to their prosecution, were, by mutual compact, agreed to be continued in common.

In submitting these reflections to the consideration of His Majesty's Government, the undersigned is duly sensible to the amicable and conciliatory sentiments and dispositions towards the United States manifested at the conclusion of Lord Bathurst's note, which will be met by reciprocal and corresponding sentiments and dispositions on the part of the American Government. It will be highly satisfactory to them to be assured that the conduciveness of the object to the national and individual prosperity of the inhabitants of the United States operates with His Majesty's Government as a forcible motive to concession. Undoubtedly, the participation in the liberties of which their right is now maintained is far more important to the interests of the people of the United States than the exclusive enjoyment of them can be to the interests of Great Britain. The real, general, and ultimate interests of both the nations on this object, he is fully convinced, are the same. The collision of particular interests which heretofore may have produced altercations between the fishermen of the two nations, and the clandestine introduction of prohibited goods by means of American fishing vessels, may be obviated by arrangements duly concerted between the two Governments. That of the United States, he is persuaded, will readily co-operate in any measure to secure those ends compatible with the enjoyment by the people of the United States of the liberties to which they consider their title as unimpaired, inasmuch as it has never been renounced by themselves.

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The undersigned prays Lord Castlereagh to accept the renewed assurance of his high consideration.

JOHN QUINCY ADAMS.

Right Hon. Lord Viscount CASTLEREAGH,
His Majesty's principal Secretary of State for Foreign Affairs.

Mr. Adams to the Secretary of State.

[Extract.]

LONDON, *February 8, 1816.*

In relation to the fisheries, little was said; he told me that he had, the evening before, read my note to him concerning them; that the British Government would adhere to their principle respecting the treaty, and to the exclusive rights of their territorial jurisdiction; but that they had no wish to prevent us from fishing, and would readily enter into a negotiation for an arrangement on this subject.

Mr. Monroe to Mr. Adams.

DEPARTMENT OF STATE, *February 27, 1816*

SIR: Since my last of the 10th of December, I have had the honor to receive your letter of November 21, with those of the 12th, 19th, 26th and 30th of September, the 7th and 31st of October, and 8th of November. With the latter, a copy of Lord Bathurst's reply to your note of September 25, on the fisheries, was likewise received.

It appears by these communications that, although the British Government denies our right of taking, curing and drying fish within their jurisdiction, and on the coast of the British provinces in North America, it is willing to secure to our citizens the liberty stipulated by the treaty of 1783, under such regulations as will secure the benefit to both parties, and will likewise prevent the smuggling of goods into the British provinces by our vessels engaged in the fisheries.

It is hoped that the reply which you intimate you intended giving to Lord Bathurst's note may have produced some change in the sentiments of the British Government on this interesting subject; it is nevertheless, thought proper to enclose you an instruction, to be shown to the British Government, authorizing you to negotiate a convention providing for the objects contemplated.

It is very important that this trust should be executed in a manner not to weaken our right, which, it is presumed, may be done with the concurrence of the British Government, either by the reservation of mutual rights, or making the instrument a remedy for abuses.

As to the manner in which the injuries complained of by the British Government are to be remedied, you will be able, in aid of your own knowledge of the subject, to obtain better information than I can communicate.

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The British project will show the nature and extent of these injuries, and it will be your object to make the remedy as harmless to our citizens and as safe to the public rights as possible.

I have the honor to be, &c.

JAMES MONROE.

Mr. Monroe to Mr. Adams.

DEPARTMENT OF STATE, *February 27, 1816*

SIR: It being represented, by your letter of the 8th of November, that the British Government was disposed to regulate, in concert with the United States, the taking of fish on the coasts, bays, and creeks of all His Britannic Majesty's dominions in America, and the curing and drying of fish by their citizens on the unsettled bays, harbors, and creeks of Nova Scotia, Magdalen islands, and Labrador, in such manner as to promote the interest of both nations, you will consider this letter an authority and instruction to negotiate a convention for these purposes.

I have the honor to be, &c.

JAMES MONROE.

Mr. Monroe to Mr. Adams.

[Extract.]

DEPARTMENT OF STATE, *May 24, 1816.*

A hope is entertained that you will have arranged with the British Government the difference respecting the fisheries before this reaches you. Should you not have been able to do it, you will endeavor to comprise it in the general arrangement which you are authorized to make, on the principles stated in my letter of the 27th of February.

Mr. Monroe to Mr. Adams.

DEPARTMENT OF STATE, *July 8, 1816.*

Mr. Bagot has received a power to arrange the difference respecting the taking, and curing and drying fish on the shores of the British colonies, but whether it authorizes such an arrangement, as will be useful and satisfactory to us, I am as yet uninformed. He has also a power to regulate the naval force, to be maintained on the Lakes, on each side, the nature and extent of which, I have also yet to learn. This power to Mr. Bagot, will diminish as to these objects, the authority which has been sent to you. In every other respect, your power will remain in full force, and we hope produce the salutary effect contemplated by it.

Mr. Monroe to Mr. Adams.

DEPARTMENT OF STATE,
August 13, 1816.

To avoid losing the opportunity of the British packet. I hasten to communicate to you some facts with which it is material that you should be made immediately acquainted.

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In consequence of instructions to Mr. Bagot, I have had several communications with him, relative to the naval force to be retained on the Lakes by each Power, and also respecting the right of curing and drying Fish, on the Shores of the British Provinces, Northward of the United States, without having concluded a definitive arrangement, on either Subject.

* * * * * * *

On the other subject,[a] Mr. Bagot offered to secure to us the right in question, on the Labrador shore, between Mount Joli and the Bay of Esquimaux, near the entrance of the Strait of Belle Isle. It was necessary for me to seek detailed information of the value of this accommodation, from those possessing it at Marblehead and elsewhere, which I did, the result of which was, that it would be more for our advantage, to commence at the last mentioned point, and to extend the right, Eastward, thro' the Strait of Belle Isle, as far along the Labrador Coast as possible. To this he objected, offering then, an alternative, on the shore of the Island of Newfoundland, to commence at Cape Ray, and extend East to the Ramea Islands. Of the value of this coast, I am likewise ignorant. The negotiation must therefore be again suspended, until I obtain the information requisite to enable me to act in it.

It is probable that the arrangement of these two interests, will again rest with you. The advantage of it, as you are already authorized to treat on other important subjects, is obvious.

At the commencement of our conferences, Mr. Bagot informed me of an order which had been issued by Adm: Griffith, to the British Cruizers, to remove our fishing vessels from the coasts of those Provinces, which he would endeavor to have revoked, pending the negotiation. His attempt succeeded. I shall endeavour to have this revocation extended, so as to afford the accommodation desired, until the negotiation is concluded. All the information which has been or may be obtained on this subject, shall be transmitted to you.

I have the honor to be, &c.,

JAMES MONROE.

Mr. Bagot to Mr. Monroe.

WASHINGTON, *November 27, 1816.*

SIR: In the conversation which I had with you a few days ago, upon the subject of the negotiation into which the British Government is willing to enter, for the purpose of affording to the citizens of the United States such accommodation for their fishery, within the British jurisdiction, as may be consistent with the proper administration of His Majesty's dominions, you appeared to apprehend that neither of the propositions which I had had the honor to make to you upon this subject would be considered as affording in a sufficient degree the advantages which were deemed requisite.

In order that I may not fail to make the exact nature of these propositions clearly understood, and that I may fully explain the considerations by which they have been suggested, it may perhaps be de-

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[a] Fisheries.

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sirable that I should bring under one view the substance of what I have already had the honor of stating to you in the several conferences which we have held upon this business.

It is not necessary for me to advert to the discussion which has taken place between Earl Bathurst and Mr. Adams. In the correspondence which has passed between them, you will have already seen, in the notes of the former, a full exposition of the grounds upon which the liberty of drying and fishing within the British limits, as granted to the citizens of the United States by the treaty of 1783, was considered to have ceased with the war, and not to have been revived by the late treaty of peace.

You will also have seen therein detailed the serious considerations affecting not only the prosperity of the British fishery, but the general interests of the British dominions, in matters of revenue as well as government, which made it incumbent upon His Majesty's Government to oppose the renewal of so extensive and injurious a concession, within the British sovereignty, to a foreign state, founded upon no principle of reciprocity or adequate compensation whatever. It has not been thought necessary to furnish me with additional argument upon this point. I therefore confine myself, upon the present occasion, to a brief repetition of what I have already, at different periods, had the honor to submit to your consideration upon the subject of an arrangement by which it is hoped practically to reconcile the different views of our respective Governments.

It will be in your recollection that, early in the month of July last, I had the honor to acquaint you that I had received instructions from my Government to assure you that, although it had been felt necessary to resist the claim which had been advanced by Mr. Adams, the determination had not been taken in any unfriendly feeling towards America, or with any illiberal wish to deprive her subjects of adequate means of engaging in the fisheries; but that, on the contrary, many of the considerations which had been urged by Mr. Adams, on behalf of the American citizens formerly engaged in this occupation, had operated so forcibly in favor of granting to them such a concession as might be consistent with the just rights and interests of Great Britain, that I had been furnished with full powers from His Royal Highness the Prince Regent to conclude an arrangement upon the subject, which it was hoped might at once offer to the United States a pledge of His Royal Highness's goodwill, and afford to them a reasonable participation of those benefits of which they had formerly the enjoyment.

It being the object of the American Government, that, in addition to the right of fishery, as declared by the first branch of the fourth article of the treaty of 1783 permanently to belong to the citizens of the United States, they should also enjoy the privilege of having an adequate accommodation, both in point of harbors and drying ground, on the unsettled coasts within the British sovereignty, I had the honor to propose to you that that part of the southern coast of Labrador which extends from Mount Joli, opposite the eastern end of the island of Anticosti, in the Gulf of St. Lawrence, to the bay and isles of Esquimaux, near the western entrance of the straits of Belleisle, should be allotted for this purpose, it being distinctly agreed that the fishermen should confine themselves to the unsettled parts of the

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coast, and that all pretensions to fish or dry within the maritime limits, or on any other of the coasts of British North America, should be abandoned.

Upon learning from you, some weeks afterwards, that, from the information which you had received upon the subject of this coast, you were apprehensive that it would not afford, in a sufficient degree, the advantages required, I did not delay to acquaint you that I was authorized to offer another portion of coast, which it was certainly not so convenient to the British Government to assign, but which they would nevertheless be willing to assign, and which, from its natural and local advantages, could not fail to afford every accommodation of which the American fishermen could stand in need. I had then the honor to propose to you as an alternative, that, under similar conditions, they should be admitted to that portion of the southern coast of Newfoundland which extends from Cape Ray eastward to the Ramea islands, or to about the longitude of 57° west of Greenwich.

The advantages of this portion of coast are accurately known to the British Government; and, in consenting to assign it to the uses of the American fishermen, it was certainly conceived that an accommodation was afforded as ample as it was possible to concede, without abandoning that control within the entire of His Majesty's own harbors and coasts which the essential interests of His Majesty's dominions required. That it should entirely satisfy the wishes of those who have for many years enjoyed, without restraint, the privilege of using for similar purposes all the unsettled coasts of Nova Scotia and Labrador, is not to be expected; but in estimating the value of the proposal, the American Government will not fail to recollect that it is offered without any equivalent, and notwithstanding the footing upon which the navigation of the Mississippi has been left by the treaty of Ghent, and the recent regulations by which the subjects of His Majesty have been deprived by the privileges, which they so long enjoyed, of trading with the Indian nations within the territory of the United States.

I have the honor to be, &c. CHARLES BAGOT.

Mr. Monroe to Mr. Bagot.

DEPARTMENT OF STATE, *December 30, 1816.*

SIR: I have had the honor to receive your letter of the 27th of November, and to submit it to the consideration of the President.

In providing for the accommodation of the citizens of the United States engaged in the fisheries on the coast of His Britannic Majesty's colonies, on conditions advantageous to both parties, I concur in the sentiment that it is desirable to avoid a discussion of their respective rights, and to proceed, in a spirit of conciliation, to examine what arrangement will be adequate to the object. The discussion which has already taken place between our Governments has, it is presumed, placed the claim of each party in a just light. I shall, therefore, make no remark on that part of your note which relates to the right of the parties, other than by stating that this Government entered

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into this negotiation on the equal ground of neither claiming nor making any concessions in that respect.

You have made two propositions, the acceptance of either of which must be attended with the relinquishment of all other claims on the part of the United States, founded on the first branch of the fourth article of the treaty of 1783. In the first you offer the use of the territory on the Labrador coast, lying between Mount Joli and the bay of Esquimaux, near the entrance of the strait of Belleisle; and, in the second, of such part of the southern coast of the island of Newfoundland as lies between Cape Ray and the Ramea islands.

I have made every inquiry that circumstances have permitted, respecting both these coasts, and find that neither would afford to the citizens of the United States, the essential accommodation which is desired; neither having been much frequented by them heretofore, nor likely to be in the future. I am compelled, therefore, to decline both propositions.

I regret that it has not been in my power to give an earlier answer to your note; you will, however, have the goodness to impute the delay to a reluctance to decline any proposition which you had made, by the order of your Government, for the arrangement of an interest of such high importance to both nations, and to the difficulty of obtaining all the information necessary to guide this Government in the decision.

I have the honor to be, &c.

JAMES MONROE.

The Right Hon. CHARLES BAGOT.

Mr. Bagot to Mr. Monroe.

WASHINGTON, *December 31, 1816.*

SIR: I have the honor to receive your letter of yesterday's date, acquainting me that neither of the propositions which I had submitted to your consideration, upon the subject of providing for the citizens of the United States engaged in the fisheries some adequate accommodation for their pursuit upon the coast of His Majesty's territories, having been found to afford the essential conveniences which are desired, you are compelled to decline them.

The object of His Majesty's Government, in framing these propositions, was to endeavor to assign to the American fishermen, in the prosecution of their employment, as large a participation of the conveniences afforded by the neighboring coasts of His Majesty's settlements as might be reconcileable with the just rights and interests of His Majesty's own subjects, and the due administration of His Majesty's dominions; and it was earnestly hoped that either one or the other of them would have been found to afford, in a sufficient degree, the accommodation which was required.

The wish of His Royal Highness the Prince Regent to extend to the citizens of the United States every advantage which, for the purposes in view, can be derived from the use of His Majesty's coasts, has no other limit than that which is necessarily prescribed by a regard to the important considerations to which I have adverted.

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His Royal Highness is willing to make the utmost concession which these considerations will admit; and, in proof of the sincerity of this disposition, I have received His Royal Highness's instructions to acquaint you that if, upon examination of the local circumstances of the coasts, which I have had the honor to propose, the American Government should be of opinion that neither of them, taken separately, would afford, in a satisfactory degree, the conveniences which are deemed requisite, His Royal Highness will be willing that the citizens of the United States should have the full benefit of both of them, and that, under the conditions already stated, they should be admitted to each of the shores which I have had the honor to point out.

In consenting to assign to their use so large a portion of His Majesty's coasts, His Royal Highness is persuaded that he affords an unquestionable testimony of his earnest endeavor to meet, as far as is possible, the wishes of the American Government, and practically to accomplish, in the amplest manner, the objects which they have in view. The free access to each of these tracts cannot fail to offer every variety of convenience which the American fishermen can require in the different branches of their occupation; and it will be observed that an objection which might possibly have been felt to the acceptance of either of the propositions, when separately taken, is wholly removed by the offer of them conjointly; as, from whatever quarter the wind may blow, the American vessels engaged in the fishery will always have the advantage of a safe port under their lee.

His Royal Highness conceives that it is not in His Royal Highness's power to make a larger concession than that which is now proposed, without injury to the essential rights of His Majesty's dominions, and some of the chief interests of His Majesty's own subjects. But it will be a source of sincere satisfaction to His Royal Highness if, in the arrangement which I have the honor to submit, the citizens of the United States shall find, as His Royal Highness confidently believes that they will find, ample means of continuing to pursue their occupation with the convenience and advantage which they desire.

I have the honor to be, with the highest consideration, sir, &c.

CHARLES BAGOT.

Mr. Monroe to Mr. Bagot.

DEPARTMENT OF STATE, *January 7, 1817.*

SIR: I have had the honor to receive your letter of the 31st of December, proposing an accommodation of the difference between our Governments relative to the fisheries, comprised in the first branch of the fourth article of the treaty of 1783, by the allotment of both the coasts comprised in your former propositions.

Having stated, in my letter, of the 30th of December, that, according to the best information which I had been able to obtain, neither of those coasts had been much frequented by our fishermen, or was likely to be so in future, I am led to believe that they would not, when taken conjointly, as proposed in your last letter, afford the accommodation which is so important to them, and which it is very satisfactory to find it is the desire of your Government that they

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should possess. From the disposition manifested by your Government, which corresponds with that of the United States, a strong hope is entertained that further inquiry into the subject will enable His Royal Highness the Prince Regent to ascertain that an arrangement, on a scale more accommodating to the expectation of the United States, will not be inconsistent with the interest of Great Britain.

In the mean time, this Government will persevere in its measures for obtaining such further information as will enable it to meet yours in the conciliatory views which are cherished on both sides.

I have the honor to be, &c.

JAMES MONROE.

The Right Hon. CHARLES BAGOT.

Mr. Monroe to Mr. Adams.

DEPARTMENT OF STATE, *February 5, 1817.*

SIR: I have the honor to forward to you, herewith, a copy of my correspondence with Mr. Bagot, in relation to the fisheries on the coast of Labrador, &c.; from which you will perceive that our negotiation on that interesting subject has not had the desired result.

Mr. Bagot professes, on the part of his Government, the most conciliatory disposition in regard to this affair, and it is yet to be hoped that it may be satisfactorily settled. With this view, the President intends to renew the negotiation as soon as he can obtain the information necessary to enable him to decide what arrangement would be best calculated to reconcile the interests of both parties, which he hopes to do in the course of a few months. In the mean time, he expects that no measures will be taken by the British Government to alter the existing state of things, and that it will be in your power to obtain the renewal of the order to the naval officer commanding on that station not to interrupt or disturb our fishermen during the approaching season.

You will see the importance of an early attention to this subject, as the fishing season is fast approaching.

I have the honor to be, &c.

JAMES MONROE.

Mr. Adams to Lord Castlereagh.

23 CRAVEN STREET, *April 21, 1817.*

The undersigned, envoy extraordinary and minister plenipotentiary from the United States of America, has received the four projected articles for a supplement to the commercial convention of 3d July, 1815, sent him by direction of Lord Castlereagh, and has transmitted them for the consideration of his Government.

By a letter of instruction from the Secretary of State of the United States of the 5th of February last, the undersigned is informed that the negotiation between him and Mr. Bagot, in relation to the fisheries on the North American coast, had not been brought to the desired result; that it is yet to be hoped, however, that it may be

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satisfactorily settled; that, with this view, it was the President's intention to renew the negotiation as soon as he could obtain the information necessary to ascertain what arrangement would be best calculated to reconcile the interests of both parties, which he hoped to do in the course of a few months; that, in the mean time, he relied that no measures would be taken by His Majesty's Government to alter the existing state of things; and, particularly, that the order to the naval officer commanding on that station, not to interrupt or disturb the American fishermen during the approaching season, would be renewed.

The undersigned has the honor of renewing to Lord Castlereagh the assurance of his high consideration.

JOHN QUINCY ADAMS.

Lord Castlereagh to Mr. Adams.

FOREIGN OFFICE, *May 7, 1817.*

The undersigned, His Majesty's principal Secretary of State for Foreign Affairs, in reply to Mr. Adams's note of the 21st ultimo, has the honor to acquaint him that, as soon as the proposition which Mr. Bagot was authorized in July last, to make to the Government of the United States, for arranging the manner in which American citizens might be permitted to carry on the fisheries within the British limits, had been by them declined, viz: in the month of February, the same was immediately notified by His Majesty's minister in America to the British admiral commanding at Halifax; the effect of which notification was to revive the orders which Mr. Bagot had taken upon himself to suspend, in the expectation that the discussions in which he was then employed with the American Government would have led to a satisfactory issue.

These discussions having failed of success, and the orders above alluded to being consequently now in full force, the British Government cannot but feel some reluctance again to suspend them, without being in possession of more precise grounds for expecting an adjustment. Persuaded, however, from the official communication received from Mr. Adams, that it is not only the sincere desire of the President of the United States to come to an amicable arrangement, but also that he, being already in possession of the views of Great Britain, is now led to entertain a strong expectation that a settlement which shall reconcile the interests of both parties may, without any material delay, be effectuated, the Prince Regent, under these impressions, is willing to give to the American Government this additional proof of his earnest wish that the negotiation should proceed, under circumstances the most favorable to a speedy and amicable conclusion, by acceding to the application of the Government of the United States, as brought forward by Mr. Adams. Instructions will, accordingly, be expedited to the naval commanders on the American station to suspend the execution of the said orders during the approaching season. Ample opportunity will thus be afforded for coming to an amicable arrangement, more particularly as it appears that the American Secretary, in February last, had it in contemplation to offer, for the consideration of the British Government, some specific proposition on

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the subject, which Mr. Bagot did not then feel himself authorized to take, *ad referendum*, but which he has since been instructed to receive, and transmit for the opinion of his court.

Mr. Adams is requested to assure the President of the United States that the Prince Regent has been desirous of seizing this, the earliest occasion, since his Elevation to the Presidency, of evincing to Him and to the United States His Royal Highness's Disposition to cultivate a good understanding, in the confidence that the President will meet this sentiment with a corresponding Feeling.

The undersigned begs Mr. Adams will accept the assurances of his high Consideration.

(Signed) CASTLEREAGH.

Mr. Bagot to Mr. Rush, Acting Secretary of State.

WASHINGTON, *May 27, 1817.*

SIR, In laying before my Government the correspondence which passed last year between the Secretary of the Department of State and myself, upon the subject of the accommodation which His Royal Highness the Prince Regent was willing to afford to the Citizens of the United States for the purposes of their Fishery, I did not fail to represent, that, in the Conversations which had taken place upon the propositions which I had been authorized to make, and which were finally declined, the Secretary of the Department of State had intimated a wish to communicate to me some particular arrangement which would be satisfactory upon the subject to the American Government.

I have now received the Commands of His Royal Highness to acquaint you, that, whilst His Royal Highness regrets, that the very liberal accommodation which I was instructed to offer should not have been thought to afford the advantages which the American Government desired, His Royal Highness still cherishes the same disposition to admit the Citizens of the United States to such participation of the conveniences afforded to their Fishery by the neighbouring Coasts of His Majesty's Dominions, as may justly consist with His Majesty's rights, and the interests of His own Subjects.

His Royal Highness is willing to receive in a sincere spirit of friendly accommodation whatever suggestion the American Government may have to offer which they may conceive to be reconcilable with these primary considerations—His Royal Highness feels assured, that the Government of the United States must know so well the nature and value of those interests of His Majesty's subjects which it is the first object of His Royal Highness to protect and preserve, that they will not fail to frame any proposition which they may be desirous of making in such a spirit of moderation as will not impose upon His Royal Highness the necessity of declining to entertain it. His Royal Highness has therefore commanded me to ascertain from the American Government the extent of the accommodation which they seek to obtain, and at the same time to give the assurance of His Royal Highness that it will be considered with the sincere and earnest hope that it may not be found irreconcilable with those important objects to which I have adverted.

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I shall be happy to receive the proposition which the President may wish to make whenever you will do me the honor to communicate it; and although I am not authorized again to propose to the Commanders of His Majesty's Ships on the Coast of North America, that they should suspend, during it's consideration by my Government, the orders under which they are now acting, I shall take the earliest opportunity of forwarding it to my Government, in the hope that, if it should lead to an arrangement, the Orders consequent upon that arrangement may be given with as little delay as possible.

I have, etc.

CHARLES BAGOT.

Mr. Rush, Acting Secretary of State, to Mr. Bagot.

DEPARTMENT OF STATE, *May 30, 1817.*

SIR: I had the honor to receive, and have laid before the President, your note of the 27th of this month. In answer to it, I have the honor to state that this Government is not yet prepared to make known, in any definite and final shape, the nature and extent of the accommodation desired by its citizens engaged in the fisheries along the coast of His Britannic Majesty's dominions, according to the invitation held out, by order of the Prince Regent, in your note. At the same time, I am directed by the President to inform you that he recognises, in the terms of this invitation, not less than in the general scope of your note, a spirit of friendly accommodation, which this Government, not foregoing rights which it feels itself bound to look to, will nevertheless be desirous, in the fullest extent, to reciprocate.

On the return of the President from a tour through part of the United States, which he is now upon the eve of commencing, it is expected that this Department will be enabled to offer such propositions as taking for their basis the principles stated in your note, it is confidently hoped may end in an adjustment of this important interest, upon terms reconcileable with the views of both nations, and serve to strengthen the harmony and good understanding which it is so desirable to cultivate and preserve between them.

I have the honor to be, &c.

RICHARD RUSH.

The Right Hon. CHARLES BAGOT.

Mr. Rush, Acting Secretary of State, to Mr. Bagot.

DEPARTMENT OF STATE, *August 4, 1817.*

SIR: It becomes my duty to address you upon a subject of deep interest to all those citizens of this country who are concerned in the fisheries.

By representations made to this Department, it appears that, at the commencement of the present fishing season, twenty sail of fishing vessels, of from twenty-five to forty-five tons burden, belonging to ports of the United States, were fitted out and sailed for the purpose of fishing on the western bank. That, while on their way, a number

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of them were compelled, by a storm, to put into a harbor at Ragged island, near Shelburne light-house. That, while here, they were boarded by an officer of the customs, who demanded and received light-money from them, notwithstanding the circumstances of compulsion and distress under which they had entered the port. That they afterwards proceeded to the bank, where, after remaining many weeks, they completed their fares of fish, and commenced their return to the United States. That, meeting with another severe storm upon their return, they were again forced to seek shelter in a British port, a few leagues to the westward of Halifax. That in this port they were captured by an armed barge, despatched from the British sloop of war *Dee*, Captain Chambers, and the next morning ordered for Halifax, where they all arrived on the 9th of June. That the unfortunate crews have been exposed to peculiar inconveniences and hardships; and that those who desired to return to their homes were refused passports towards facilitating that end, from the proper officers, to whom they made application. For further particulars connected with the above facts, I have the honor to enclose you an extract of a letter[a] to this Department from the collector of Boston, dated June 30th. It will be seen that it is not a case involving unsettled questions between the two countries in relation to the fisheries, but which it is so confidently hoped are in a train of satisfactory and amicable arrangement. It is, on the other hand, distinctly said that the boats, far from taking a fish in any waters claimed as British waters, took them all at the distance of many leagues from the coast; while the other alleged facts would seem to forbid the imputation of their having entered a British harbor from any other than a lawful and necessary motive.

Should the facts as represented prove to be well founded, the President feels persuaded that your Government will not fail to take such measures, as well towards redressing the evil complained of, in the present instance, as towards preventing the recurrence of one of the like nature, as are due to justice and the harmony and good understanding which so happily subsist between the two nations.

I pray you, sir, to accept, &c

RICHARD RUSH.

Mr. Bagot to Mr. Rush.

WASHINGTON, *August 8, 1817.*

SIR: I had yesterday the honor to receive your letter of the 4th instant acquainting me with the representations which had been made to the Department of State in relation to the seizure, by His Majesty's ship *Dee*, of certain American fishing vessels found in the harbors of Port Negro and Ragged island, upon the coast of Nova Scotia, and transmitting to me the extract of a letter upon the subject from the collector of the customs at Boston.

Should the circumstances of this seizure, as they have been represented to the American Government, prove to be correct, I can have no hesitation in giving you every assurance that His Majesty's Gov-

[a] The letter referred to is mislaid.

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ernment will willingly take measures for the prompt redress of the injuries to which it may have led, and for the prevention of their recurrence; but the representations which I have received upon the subject from the commander-in-chief of His Majesty's squadron on the Halifax station differ so essentially in point of fact from those which have been made to the American Government, that I have every reason to hope that upon a proper investigation of the transaction, it will not be found to involve any just cause of complaint.

I have the honor to transmit to you, enclosed, the copy of a letter from the captain of His Majesty's ship *Dee* to the commander of His Majesty's squadron on the coast of Nova Scotia, reporting the grounds upon which he had deemed it to be his duty to detain these vessels, together with a copy of the orders under which he has acted.

By these papers you will perceive that the vessels in question were in the habit of occupying, and were, at the time of their seizure actually occupying, for the purposes of their fishery, the settled harbors of His Majesty's dominions, in violation of the orders at all times enforced against all foreign vessels detected in making similar encroachments, and of which it is not to be supposed that the masters of these vessels could have been ignorant.

The proceedings which have been instituted upon the captured vessels will necessarily lead to a complete investigation of all the circumstances under which they were detained; and there can be no doubt that the merits of the whole case, which appear to rest altogether upon questions of fact, will be then fully ascertained.

I have the honor to be, with the highest consideration, sir, your most obedient, humble servant,

CHARLES BAGOT.

[Inclosure No. 1.]

By Sir. David Milne, K. C. B. and K. W. N., Rear Admiral of the Blue, and commander-in-chief of His Majesty's ships and vessels employed, and to be employed, in North America, and on the lakes of Canada, &c. &c.

You are hereby required and directed to proceed, in His Majesty's ship under your command, to Halifax; and having received on board a pilot at that port, you will repair and cruise between Sambro light-house and Cape Sable, using every means in your power for the protection of the revenue, as also the fisheries on the coast, against the encroachment of foreigners.

On your meeting with any foreign vessel fishing or at anchor in any of the harbors or creeks in His Majesty's North American provinces or within our maritime jurisdiction, you will seize and send such vessel so trespassing to Halifax for adjudication, unless it should clearly appear that they have been obliged to put in there in consequence of distress; acquainting me with the cause of such seizure, and every other particular, to enable me to give all information to the lords commissioners of the admiralty.

You are to come within sight of signals from Sambro light-house every fourteen days, if the wind and weather will permit, and wait eight hours at that distance. You will continue on this service for six weeks from your sailing from Halifax, at the expiration of which time you will return to that port for further orders.

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Given on board His Majesty's ship Leander, Bermuda, the 12th day of May, 1817.

DAVID MILNE, *Rear Admiral.*

To Captain SAMUEL CHAMBERS, *of His Majesty's ship Dee.*
By command of the Rear Admiral

J. P. LAMEY.

[Inclosure No. 2.]

Captain Samuel Chambers, of His Britannic Majesty's ship Dee, to Rear Admiral Sir David Milne, dated

HIS MAJESTY'S SHIP DEE,
Off Shelburne, June 8, 1817.

SIR: In compliance with your order of the 12th ultimo, I sailed from Halifax on the 30th ultimo, but did not meet or receive any intelligence of foreign fishing vessels being within our jurisdiction until the 3d instant; when, being off the Isle Maten, I was informed that the whole of the banks to the westward (off Cape Sable and Shelburne) were fished by American schooners; and that they continually resorted to the creeks on this coast in order to catch their bait, clean their fish, wood, water, &c.; this, of course, is highly detrimental to the interest of the industrious fishermen on this coast. I was also informed that the intricate harbors of Cape Negro and Ragged island were their resort most evenings, several going in; but more particularly on Saturdays, when they remain till Monday, to procure bait for the ensuing week. At the former place they had not been well received; at the latter, I suspect, much encouragement had been given them by an individual. I intended having our boats into Ragged island harbor before daylight on the 4th, but light winds prevented our getting that length. I, therefore, in the course of the day, put into Shelburne; and, in the evening, despatched the boats, under the charge of Lieutenant Hooper, into Ragged island, with the order I enclose; the weather preventing any boats returning until the 7th, when I received information that nine American vessels had been found at Ragged island harbor, lying with their nets set. Lieutenant Hooper remained at this place, and despatched Lieutenant Lechenere, with a gig and cutter, to Cape Negro, with the enclosed order. He found two American fishing vessels in the harbor, and seven others came in in the course of Saturday. The whole joined me this day with two others that came into Ragged island. I have, therefore, in obedience to your directions, sent them into Halifax for adjudication; as any distress they may plead might, with more ease, be relieved at the regular harbor of Shelburne, which has been avoided for two intricate harbors in its immediate neighborhood.

I beg further to state, that, without the use of our harbors, it appears impossible for any foreigners to carry on successful fishing on this coast, which fishing has much injured our fishermen; and I have every reason to believe that considerable smuggling of tobacco, shoes, &c. is carried on by their boats. I beg leave to enclose a list of the detained vessels, and also to inform you that, from some of the Americans attempting to tamper with some of our boats' crews, and

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the riotous conduct of others, I have been obliged to take precautionary measures to prevent any of the vessels being run away with.

I have the honor to be, &c.

SAMUEL CHAMBERS, *Captain.*

Rear Admiral Sir DAVID MILNE, *K. C. B.*,
Commander-in-chief, &c.

Mr. Bagot to Lord Castlereagh.

WASHINGTON, *April 7, 1818.*

My dear Lord—You will receive by this mail a despatch from me respecting the Fisheries, in which I refer to a conversation which I had had upon the subject with Mr. Adams, when I communicated to him the orders which Sir David Milne proposed to give to the ships under his command, in regard to the American vessels found fishing upon our coast during the present season. I have thought it better not to mention in this despatch, but to reserve for a private letter, some part of the conversation which then passed between us, and which was not a little remarkable.

I met Mr. Adams accidentally on the street, and when I told him of the letter which I had received from Sir David Milne, he showed some surprise, but certainly no irritation. In the course, however, of our conversation, which lasted about ten minutes, he said, not with a tone of anger, but with the ordinary tone of earnestness with which he usually speaks upon business, that, after all, "he believed that they should have to fight about it, and that his opinion was, that they ought to do so."

I deprecated in some common-place phrase a resort to such an extremity, when he proceeded to say that, "holding as he did the right of participation in the United States to be unequivocal, undeniable, and absolute, it was a matter only to be settled by agreement or by force; and, all arrangement by assignment of coast being out of the question, he did not see distinctly what proposition of arrangement could be made, which would promise a satisfactory result."

He then said that "we could have no right to seize their ships; that all the lawyers in England with whom he had spoken upon the subject were of that opinion; that our own judge had last year released the vessels which had been captured by the Dee, and that, without an Act of Parliament for the purpose, they could not be taken; or, if they were taken, the American Government would have a claim upon Great Britain for full indemnity for them."

The more I have reflected upon this conversation, the more extraordinary I have thought it. Mr. Adams is, I presume, much too cautious a man to have suffered himself, in his official situation, to be betrayed by mere temper into the use of such expressions to me. On the other hand, I equally presume that he cannot seriously believe that the point itself is a ground of war for this country; or, even if it were, that this country could now be excited to a war with Great Britain upon a point in which two States at the utmost have any immediate interest whatever. The only explanation which I can

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conceive of his conversation is either that, being himself of the State of Massachusetts, the only State which is deeply interested in the question, he is anxious to hold a very high tone upon the subject; or that it is the policy of the Government not to let the matter be brought to any arrangement but to reserve it as a grievance, to be used as it may hereafter be wanted. Whatever may have been the motive which prompted Mr. Adams expressions, they are, as coming from him, somewhat extraordinary, and it is certainly my duty to report them to your lordship.

I have the honour to be, &c. CHARLES BAGOT.

Mr. Adams to Mr. Rush.

[Extract.]

DEPARTMENT OF STATE, *May 21, 1818.*

It is important that the commercial part of the community, both here and in Great Britain, should have timely notice of the state in which the relations between the two countries are to stand after the termination of that convention [of 1815]. And, as there are other objects of moment to be adjusted, the President desires you to propose an immediate general negotiation of a commercial treaty, to embrace the continuance, for a further term of ——— years, of the convention; and, also, the other subjects in discussion between the two Governments, namely—the question concerning the slaves, that relating to the fisheries, the boundary line from the Lake of the Woods, and the Columbia River settlement. The President prefers taking this course to that of submitting to commissioners, at least, immediately, questions upon which he thinks it probable the two Governments may thus, by a shorter process, come to a mutual understanding between themselves.

If, upon making this proposal, the British Government agree to this negotiation, the President proposes that Mr. Gallatin and you should be authorized, jointly, as plenipotentiaries, to conclude the treaty, which it is very desirable may be concluded in season to arrive here by the commencement of the next session of Congress, which is to be on the third Monday in November. Instructions will be transmitted immediately to Mr. Gallatin, to hold himself in readiness to repair to London, upon receiving notice from you, should plenipotentiaries be appointed to treat with you; and, besides the instructions which formed the basis of the existing convention, and others already in your possession, further documents will be forwarded to you as soon as possible, which may assist you in the management of the negotiation.

Mr. Adams to Mr. Gallatin.

DEPARTMENT OF STATE, *Washington, May 22, 1818.*

[Extract.]

The present state of the relations between the United States and Great Britain has suggested to the President the expediency of pro-

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posing to the British Government the negotiation of a treaty of amity and commerce, to embrace the continuance for eight years longer of the commercial convention of July 3, 1815, and to attempt the adjustment of other objects interesting to the two countries, and upon which the Governments have not yet been able to come to an agreement. It is desirable that this negotiation should take place in the course of the ensuing summer, and that its result should be transmitted here for the commencement of the next session of Congress, fixed for the third Monday of November; for as the convention, unless continued, will expire in July, 1819, and as it is due to the interests of the merchants on both sides affected by it that early notice should be given whether its provisions are to be continued or to cease, it appears that no time is to be lost in bringing the question of its renewal or cessation to an immediate issue. As the motives for taking up the subject thus early are operative alike upon both parties, and as, in the event of the expiration of the convention of July, 1815, legislative measures preparatory to that contingency will doubtless be necessary as well in Parliament as in Congress, it is expected that this proposal will be acceded to by the British Government, and that plenipotentiaries on their part will be appointed to treat with you and Mr. Rush, to whom jointly the President proposes to commit the trust of this negotiation.

* * *

The other interests which the President hopes may be adjusted by this negotiation are—

* * *

5. The fisheries.

The correspondence between the two Governments on this subject leaves it still in the unsettled state in which it was left at the peace. Two proposals have been made, on the part of the British Government, neither of which proving acceptable, a counter-proposal from us has been promised, and will be contained in the further detailed instructions which will be prepared and forwarded to Mr. Rush, to assist you in the conduct of the negotiation.

Full Power of Albert Gallatin and Richard Rush.

James Monroe, President of the United States of America—to all whom these presents shall concern, Greeting:

Know ye, that, for the purpose of perpetuating, between the United States and His Britannic Majesty, the harmony and good correspondence happily subsisting between them, and of removing all grounds of dissatisfaction, and reposing special trust and confidence in the integrity, prudence, and abilities of Albert Gallatin, our envoy extraordinary and minister plenipotentiary at the court of France, and of Richard Rush, our envoy extraordinary and minister plenipotentiary at the court of the United Kingdom of Great Britain and Ireland, I have invested them with full and all manner of power and authority, for and in the name of the United States, to meet and confer with any person or persons authorized by His Royal Highness the

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Prince Regent, acting in the name and behalf of His Majesty the King of the United Kingdom of Great Britain and Ireland, being furnished with like power and authority; and with him or them to agree, treat, consult and negotiate of and concerning the renewal of the convention concluded at London on the 3rd of July, 1815, and concerning the general commerce between the United States and Great Britain and its dominions or dependencies, and such other matters and subjects interesting to the two nations as may be given to them in charge; and to conclude and sign a treaty or treaties, convention or conventions, touching the premises; transmitting the same to the President of the United States for his final ratification, by and with the advice and consent of the Senate of the United States.

In testimony whereof I have caused the seal of the United States to be hereunto affixed. Given under my hand, at the city of Washington, the twenty-second day of May, A. D. 1818, and of [L. S.] the independence of the United States of America the forty-second.

JAMES MONROE.

By the President:
JOHN QUINCY ADAMS,
Secretary of State.

Mr. Adams to Messrs. Gallatin and Rush.

DEPARTMENT OF STATE, *July 28, 1818.*

In the expectation that the Government of Great Britain have accepted the proposal which Mr. Rush was instructed to make, for negotiating a treaty of commerce, embracing the continuance of the convention of 3d July, 1815, for an additional term of years, and including other objects of interest to the two nations, I have now the honor of transmitting to you the President's instructions to you for the conduct of the negotiation.

* * * * * * *

5. FISHERIES.

The proceedings, deliberations, and communications upon this subject, which took place at the negotiation of Ghent, will be fresh in the remembrance of Mr. Gallatin. Mr. Rush possesses copies of the correspondence with the British Government relating to it after the conclusion of the peace, and of that which has passed here between Mr. Bagot and this Government. Copies of several letters received by members of Congress during the late session, from the parts of the country most deeply interested in the fisheries, are now transmitted.

The President authorizes you to agree to an article whereby the United States will desist from the liberty of fishing, and curing and drying fish, within the British jurisdicition *generally*, upon condition that it shall be secured as a permanent right, not liable to be impared by any future war, from Cape Ray to the Ramea islands, and from Mount Joli, on the Labrador coast, through the strait of Belleisle, indefinitely north, along the coast; the right to extend as well to curing and drying the fish as to fishing.

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By the decree of the judge of the vice-admiralty court at Halifax, on the 29th of August last, in the case of several American fishing vessels which had been captured and sent into that port, a copy of which is also now transmitted to you, it appears that all those captures have been *illegal*. An appeal from this decree was entered by the captors to the appellate court in England, and the owners of the captured vessels were obliged to give bonds to stand the issue of the appeal. Mr. Rush was instructed to employ suitable counsel for these cases if the appeals should be entered, and, as we have been informed by him, has accordingly done so. If you do not succeed in agreeing upon an article on this subject, it will be desirable that the question *upon the right* should be solemnly argued before the lords of appeals, and that counsel of the first eminence should be employed in it. Judge Wallace agreed with the advocate general that the late war completely dissolved every right of the people of the United States acquired by the treaty of 1783. But it does not appear that this question had been argued before him, and the contrary opinion is not to be surrendered on the part of the United States upon the *dictum* of a vice-admiralty court. Besides this, we claim the rights in question not *as acquired* by the treaty of 1783, but as having always before enjoyed them, and as only recognised as belonging to us by that treaty, and therefore never to be divested from us but by our own consent. Judge Wallace, however, explicitly says that he does not see how he can condemn these vessels without *an act of Parliament;* and whoever knows any thing of the English constitution must see that on this point he is unquestionably right. He says, indeed, something about an order in council, but it is very clear that would not answer. It is a question of forfeiture for a violated *territorial* jurisdiction; which forfeiture can be incurred not by the law of nations, but only by the *law of the land.* There is obviously no such law.

The argument which has been so long and so ably maintained by Mr. Reeves, that the rights of antenati Americans, as British subjects, even within the kingdom of Great Britain, have never been divested from them, because there has been no act of Parliament to declare it, applies in its fullest force to this case; and, connected with the article in the treaty of 1783, by which this particular right was recognised, confirmed, and placed out of the reach of an act of Parliament, corroborates the argument in our favor. How far it may be proper and advisable to use these suggestions in your negotiation, must be left to your sound discretion; but they are thrown out with the hope that you will pursue the investigation of the important question of British law involved in this interest, and that every possible advantage may be taken of them, preparatory for the trial before the lords of appeals, if the case should ultimately come to their decision. The British Government may be well assured that not a particle of these rights will be finally yielded by the United States without a struggle, which will cost Great Britain more than the worth of the prize.

These are the subjects to which the President is willing that your negotiation should be confined. With regard to the others of a general nature, and relating to the respective rights of the two nations in times of maritime war, you are authorized to treat of them, and to

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conclude concerning them, conformably to the instructions already in possession of Mr. Rush; or, if the difficulty of agreeing upon the principles should continue as great as it has been hitherto, you may omit them altogether.

You will not fail to transmit, by duplicates, the result of your conferences at as early a period as may be found practicable.

I am, etc.

JOHN QUINCY ADAMS.

Messrs. Gallatin and Rush to Mr. Adams.

LONDON, *October 20, 1818.*

We have the honor to transmit a convention which we concluded this day with the British plenipotentiaries.

Lord Castlereagh having expressed a wish that the negotiations might be opened before his departure for Aix-la-Chapelle, Mr. Gallatin left Paris as soon as he had received our full powers, and arrived here on the 16th of August. Our joint instructions contained in your despatch of the 28th of July did not, however, reach us till the 3d of September. We had long conversations with Lord Castlereagh at his country seat, on the 22nd and 23d of August, but could not, owing to our instructions not having arrived, discuss with him the question of the fisheries and of the West India intercourse. He left London on the 1st of September. The official conferences had begun on the 27th of August, and, for the progress of the negotiation, we beg leave to refer to the enclosed copies of the protocol, and documents annexed to it, and of two unofficial notes sent by us to the British plenipotentiaries. We will add some observations on the several objects embraced by the convention.

1. FISHERIES.

We succeeded in securing, besides the rights of taking and curing fish within the limits designated by our instructions, as a *sine qua non*, the liberty of fishing on the coasts of the Magdalen islands, and of the western coast of Newfoundland, and the privilege of entering for shelter, wood, and water, in all the British harbors of North America. Both were suggested as important to our fishermen, in the communications on that subject which were transmitted to us with our instructions. To the exception of the exclusive rights of the Hudson's Bay Company we did not object, as it was virtually implied in the treaty of 1783, and we had never, any more than the British subjects, enjoyed any right there; the charter of that company having been granted in the year 1670. The exception applies only to the coasts and their harbors, and does not affect the right of fishing in Hudson's Bay beyond three miles from the shores, a right which could not exclusively belong to, or be granted by, any nation.

The most difficult part of the negotiation related to the permanence of the right. To obtain the insertion in the body of the convention of a provision declaring expressly that that right should not be abrogated by war, was impracticable. All that could be done was to express the article in such manner as would not render the right liable to be thus abrogated. The words "for ever" were inserted for

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that purpose, and we also made the declaration annexed to the protocol of the third conference, the principal object of which was to provide in any event for the revival of all our prior rights. The insertion of the words "for ever" was strenuously resisted. The British plenipotentiaries urged that, in case of war, the only effect of those words being omitted, or of the article being considered as abrogated, would be the necessity of inserting in the treaty of peace a new article renewing the present one; and that, after all that had passed, it would certainly be deemed expedient to do it, in whatever manner the condition was now expressed. We declared that we would not agree to any article on the subject, unless the words were preserved, or in case they should enter on the protocol a declaration impairing their effect.

It will also be perceived that we insisted on the clause by which the United States renounce their right to the fisheries relinquished by the convention, that clause having been omitted in the first British counter-project. We insisted on it with the view—1st. Of preventing any implication that the fisheries secured to us were a new grant, and of placing the permanence of the rights secured and of those renounced precisely on the same footing. 2d. Of its being expressly stated that our renunciation extended only to the distance of three miles from the coasts. This last point was the more important, as, with the exception of the fishery in open boats within certain harbors, it appeared, from the communications above mentioned, that the fishing-ground, on the whole coast of Nova Scotia, is more than three miles from the shores; whilst, on the contrary, it is almost universally close to the shore on the coasts of Labrador. It is in that point of view that the privilege of entering the ports for shelter is useful, and it is hoped that, with that provision, a considerable portion of the actual fisheries on that coast (of Nova Scotia) will, notwithstanding the renunciation, be preserved.

* * * * * * *

Mr. Rush to Mr. Adams.

LONDON, *October 27, 1818.*

I had the honor to write you a few lines on the 19th instant, and immediately forwarded them in triplicate to the consul at Liverpool, to be sent off by the earliest ships, to say that we had on that day agreed to sign a treaty with the British plenipotentiaries on the points which I enumerated. It was signed on the 20th. The joint despatch from Mr. Gallatin and myself, bearing date on the same day, giving an account of the whole progress of the negotiation, was, together with the convention itself and all the accompanying documents, forwarded from hence to Liverpool on the 24th.

After consulting with Mr. Gallatin, I did not feel at liberty to employ a special messenger to be the bearer of the convention, trusting to the ordinary opportunities by our merchant vessels, which are so constant, and in general so safe. I accompanied the packet with a special letter to Mr. Maury, apprizing him of the importance of committing it to hands that were trustworthy, and with directions that it should be delivered to the postmaster at New York, or wherever else the ship may arrive, without any delay. It will thus,

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I hope, reach Washington with all expedition and safety. On the side of the British plenipotentiaries a special secretary was employed for the business of this negotiation. On ours Mr. Smith has acted; a circumstance which is alluded to only that I may add how unremitting has been his attention, and how useful his services. Mr. Gallatin set out on his return to Paris on the morning of the 22d. Duplicate of the convention, the despatch, and all the other papers, will be transmitted at the earliest moment that they can be copied.

After what is said in your despatch of the 28th of July, to the joint mission, respecting Judge Wallace's decree on the 29th of August, 1817, at Halifax, in the cases of the captured fishing vessels, it is proper I should state that I have been informed by Mr. Slade, in a note of the 14th of this month, that no appeal has been entered by the captors from the sentences of restitution; and that, the time having now gone by allowed by the practice of the admiralty for entering appeals, none can be entered. He adds, that as the owners of the vessels were obliged to give bail at Halifax to answer the appeals, it is possible that they may also have been made to place counter-security in the hands of the bail; in which case the bail may refuse to part with such security, without a desertion from the appellate court here; that is, a decree that the appeals had not been prosecuted, and that the original sentence should be carried into effect. But as such a decree would be attended with expense, he does not advise it for the present. In the event of its becoming necessary to the owners, they should be informed that they cannot have the benefit of it until office copies of the decrees of restitution at Halifax are first forwarded. Mr. Slade is the proctor whom I employed contingently to give attention to these cases, as mentioned in my despatch of the 21st of March.

From the instructions of the 28th of July, I infer that Government contemplated becoming instrumental to the solemn argument of the great question of right under the treaty of 1783, only in the event of no article respecting the fisheries being agreed upon. As one has been signed I design to take no further steps on this head, should the convention be ratified, without further instructions from the Department. I mention this, perceiving, from the newspapers, that there had been fresh captures of our fishing vessels during the last season, followed by sentences of condemnation, from which appeals, on the part of the claimant, may, I take it for granted, be anticipated.

With very great respect, I have the honor to be, etc.

(Signed) RICHARD RUSH.

PROTOCOLS OF THE CONFERENCES IN THE NEGOTIATION OF THE TREATY OF OCT. 20, 1818.

No. 1.

Protocol of the first conference between the American and British plenipotentiaries, held at Whitehall on the 27th of August, 1818.

Present: Mr. Gallatin, Mr. Rush, } American.
Mr. Robinson, Mr. Goulburn. } British.

The plenipotentiaries presented and exchanged their respective full powers.

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It was agreed that the discussions should be carried on by conference and protocol, with the insertion in the protocol of such written documents as either party might deem necessary, for the purpose of recording their sentiments in detail.

The British plenipotentiaries stated that they were ready to proceed at once to the signature of a treaty, renewing the commercial convention of 1815 as it stands; or, that if the American plenipotentiaries should prefer to delay the signature of such a treaty of renewal till more progress should have been made in the discussion of the other topics which it is the object of the two Governments to arrange, no objection would be made to the adoption of that course. But it was explicitly stated by the British plenipotentiaries, that, with respect to all those other topics of discussion, whether purely commercial, or partaking more of a political character, they were instructed not to consent to any partial or separate consideration of them, nor to select any one in particular, as an appendage to a renewal of the existing commercial convention.

The American plenipotentiaries acquiesced in the division of the subject, represented by the British plenipotentiaries to be essential, but stated it to be their desire not to sign the treaty of renewal for the present. It was, however, agreed that the eventual signature of that instrument should not be made contingent upon a settlement of the other points, and both parties declined bringing forward any proposed modification of it.

It was agreed to meet again on Saturday at two o'clock.

ALBERT GALLATIN,
RICHARD RUSH,
FREDERICK JOHN ROBINSON,
HENRY GOULBURN.

No. 2.

Protocol of the second conference held between the American and British plenipotentiaries, at Whitehall, on the 29th of August, 1818.

Present: Mr. Gallatin, Mr. Rush, Mr. Robinson, Mr. Goulburn.

The plenipotentiaries agreed upon and signed the protocol of the preceding conference. Some general conversation then ensued upon some of the different topics of discussion.

The American plenipotentiaries stated that, whenever the British plenipotentiaries were prepared to submit their project on the impressment question, they (the American plenipotentiaries) would bring forward their proposition respecting the other maritime points; but that they did not intend to bring those topics before the conferences at all, unless the impressment of seamen was to be discussed on the part of Great Britain.

It was agreed that the next conference should take place on September 4th.

ALBERT GALLATIN,
RICHARD RUSH,
FREDERICK JOHN ROBINSON,
HENRY GOULBURN.

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No. 3.

Protocol of the third conference held between the American and British plenipotentiaries, at Whitehall, on the 17th day of September, 1818.

Present: Mr. Gallatin, Mr. Rush, Mr. Robinson, Mr. Goulburn.

The conference fixed for the 4th instant having been adjourned by mutual consent, it was held this day.

The protocol of the preceding conference was agreed upon and signed.

The American plenipotentiaries, after some previous explanation of the nature of the propositions which they were about to make, submitted the five annexed articles, (A, B, C, and D,) upon the fisheries, the boundary line, the West India intercourse, that of Nova Scotia and New Brunswick, and the captured slaves. The two first articles they stated to be drawn as permanent; and they accompanied that respecting the fisheries with the annexed explanatory memorandum. (E.)

The British plenipotentiaries submitted the annexed *projet* of articles respecting the impressment of seamen, (F;) and they expressed their conviction that a consideration of these articles would, under all the circumstances of difficulty with which the question is involved, satisfy the American plenipotentiaries of the sincere and earnest disposition of the British Government to go every practicable length in a joint effort to remove all existing causes of difference, and to connect the two countries in the firmest ties of harmony and good understanding.

The American plenipotentiaries declared that they received the proposition entirely in the same spirit; and then brought forward the annexed articles, (G,) relating to other maritime points, which, at the former conference, they had announced their intention of producing.

They also submitted three other articles, as annexed, respecting wrecks, &c. (H.)

It was agreed to meet on Friday, the 25th instant.

ALBERT GALLATIN,
RICHARD RUSH,
FREDERICK JOHN ROBINSON,
HENRY GOULBURN.

ARTICLE A.

Whereas differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof to take, dry and cure fish on certain coasts, bays, harbors, and creeks of His Britannic Majesty's dominions in America: It is agreed between the high contracting parties that the inhabitants of the said United States shall continue to enjoy unmolested, for ever, the liberty to take fish, of every kind, on that part of the southern coast of Newfoundland which extends from Cape Ray to the Ramea islands, and the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon island, on the Magdalen islands; and also on the coasts, bays, harbors, and creeks from Mount Joli, on the southern coast of Labrador, to and through the straits of Belleisle, and thence, northwardly,

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indefinitely, along the coast; and that the American fishermen shall also have liberty for ever to dry and cure fish in any of the unsettled bays, harbors, and creeks of the southern part of the coast of Newfoundland here above described, of the Magdalen islands, and of Labrador, as here above described; but so soon as the same, or either of them, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlement, without previous agreement for that purpose with the inhabitants, proprietors, or possessors of the ground; and the United States hereby renounce any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, and harbors of His Britannic Majesty's dominions in America not included within the above-mentioned limits: *Provided, however*, That the American fishermen shall be admitted to enter such bays and harbors for the purpose only of obtaining shelter, wood, water, and bait, but under such restrictions as may be necessary to prevent their drying or curing fish therein, or in any other manner abusing the privilege hereby reserved to them.

(Articles B., C., and D. omitted)

E.—*Explanatory memorandum.*

The American plenipotentiaries presented for consideration an article on the subject of certain fisheries. They stated, at the same time, that as the United States considered the liberty of taking, drying, and curing fish, secured to them by the treaty of peace of 1783, as being unimpaired, and still in full force for the whole extent of the fisheries in question, whilst Great Britain considered that liberty as having been abrogated by war; and as, by the article now proposed, the United States offered to desist from their claim to a certain portion of the said fisheries, that offer was made with the understanding that the article now proposed, or any other on the same subject which might be agreed on, should be considered as permanent, and, like one for fixing boundaries between the territories of the two parties, not to be abrogated by the mere fact of a war between them; or that, if vacated by any event whatever, the rights of both parties should revive and be in full force, as if such an article had not been agreed to.

(Articles F., G., and H. omitted)

No. 4.

Protocol of the fourth conference between the American and British plenipotentiaries, held at Whitehall, on Friday, the 25th of September, 1818.

Present: Mr. Gallatin, Mr. Rush, Mr. Robinson, Mr. Goulburn.

Explanations were asked, and given, respecting some of the articles presented by the American plenipotentiaries at the last conference.

The American plenipotentiaries, after observing that the measures already adopted, and the proposals formerly made, by the United States, could leave no doubt of their constant and anxious desire to arrange, by amicable regulations, the subject of impressment, declared their readiness to agree, with some amendments, which they submitted, (A) to the project proposed by the British plenipotentiaries, under a full expectation that an arrangement, thus founded on

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mutual confidence, could not fail to have a happy effect, both as regarding its immediate object, and in confirming the amicable relations so happily subsisting between the two countries.

It was agreed to meet again on Tuesday, the 6th of October.

ALBERT GALLATIN,
RICHARD RUSH,
FREDERICK JOHN ROBINSON,
HENRY GOULBURN.

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No. 5.

Protocol of the fifth conference held between the American and British plenipotentiaries, at Whitehall, on the 6th of October, 1818.

Present: Mr. Gallatin, Mr. Rush, Mr. Robinson, Mr. Goulburn.

The protocol of the preceding conference was agreed upon and signed.

The British plenipotentiaries gave in the five annexed articles, on the fisheries, the boundary, the Mississippi, the intercourse between Nova Scotia and the United States, and the captured slaves. (A, B, C, D, E.)

It was agreed to meet again on the 9th instant.

ALBERT GALLATIN,
RICHARD RUSH,
FREDERICK JOHN ROBINSON,
HENRY GOULBURN.

ARTICLE A.

It is agreed that the inhabitants of the United States shall have liberty to take fish, of every kind, on that part of the western coast of Newfoundland which extends from Cape Ray to the Quirpon islands, and on that part of the southern and eastern coasts of Labrador which extends from Mount Joli to Huntingdon island; and it is further agreed that the fishermen of the United States shall have liberty to dry and cure fish in any of the unsettled bays, harbors, and creeks of the said south and east coasts of Labrador, so long as the same shall remain unsettled; but as soon as the same, or any part of them, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish without a previous agreement for that purpose with the inhabitants, proprietors, or possessors of the ground.

And it is further agreed that nothing contained in this article shall be construed to give to the inhabitants of the United States any liberty to take fish within the rivers of His Britannic Majesty's territories, as above described; and it is agreed; on the part of the United States, that the fishermen of the United States resorting to the mouths of such rivers shall not obstruct the navigation thereof, nor wilfully injure nor destroy the fish within the same, either by setting nets across the mouths of such rivers, or by any other means whatever.

His Britannic Majesty further agrees that the vessels of the United States, *bona fide* engaged in such fishery, shall have liberty to enter the bays and harbors of any of His Britannic Majesty's dominions in

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North America, for the purpose of shelter, or of repairing damages therein, and of purchasing wood and obtaining water, and for no other purpose; and all vessels so resorting to the said bays, and harbors shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein.

It is further well understood that the liberty of taking, drying, and curing fish, granted in the preceding part of this article, shall not be construed to extend to any privilege of carrying on trade with any of His Britannic Majesty's subjects residing within the limits hereinbefore assigned for the use of the fishermen of the United States, for any of the purposes aforesaid.

And in order the more effectually to guard against smuggling, it shall not be lawful for the vessels of the United States, engaged in the said fishery, to have on board any goods, wares, or merchandise whatever, except such as may be necessary for the prosecution of the fishery, or the support of the fishermen whilst engaged therein or in the prosecution of their voyages to and from the said fishing grounds. And any vessel of the United States which shall contravene this regulation may be seized, condemned, and confiscated, together with her cargo.

(Article B omitted.)

ARTICLE C.

It is further agreed that the subjects of His Britannic Majesty shall have and enjoy the free navigation of the river Mississippi from its source to the ocean, and shall at all times have free access from such place as may be selected for that purpose, in His Britannic Majesty's territories, to the river Mississippi, with their goods, wares and merchandise, the importation of which into the United States shall not be entirely prohibited, on the payment of the same duties as would be payable on the importation of the same article into the Atlantic ports of the United States.

(Articles D and E omitted.)

No. 6.

The American to the British plenipotentiaries.

LONDON, *October 7, 1818.*

Mr. Gallatin and Mr. Rush present their compliments to Mr. Robinson and Mr. Goulburn, and beg leave to send them the enclosed paper containing some remarks on the articles handed to them at the conference yesterday. They are to be considered as unofficial, according to the intimation given yesterday, when they were promised, and have been drawn up merely under the hope that, by possessing the British plenipotentiaries of some of the views of the American plenipotentiaries before the next meeting on the 9th, the progress of the negotiation may be accelerated.

FISHERIES.

The American plenipotentiaries are not authorized by their instructions to assent to any article on that subject which shall not secure to the inhabitants of the United States the liberty of taking

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fish of every kind on the southern coast of Newfoundland, from Cape Ray to the Ramea islands, and on the coasts, bays, harbors, and creeks, from Mount Joli, on the southern coast of Labrador, to and through the straits of Belleisle, and thence northwardly, indefinitely, along the coast; and, also, the liberty of drying and curing fish in any of the unsettled bays, harbors, and creeks of Labrador and of the southern coast of Newfoundland, as above described; with the proviso respecting such of the said bays, harbors, and creeks as may be settled.

The liberty of taking fish within rivers is not asked. A positive clause to except them is unnecessary, unless it be intended to comprehend under that name waters which might otherwise be considered as bays or creeks. Whatever extent of fishing-ground may be secured to American fishermen, the American plenipotentiaries are not prepared to accept it on a tenure or on conditions differenet from those on which the whole has heretofore been held. Their instructions did not anticipate that any new terms or restrictions would be annexed, as none were suggested in the proposals made by Mr. Bagot to the American Government. The clauses forbidding the spreading of nets, and making vessels liable to confiscation in case any articles not wanted for carrying on the fishery should be found on board, are of that description, and would expose the fishermen to endless vexations.

MISSISSIPPI.

The American plenipotentiaries are not authorized to agree to any condition that would bring the British in contact with the Mississippi. The right to the navigation of that river could only be derived from the treaty of 1783; and, if viewed as a matter of compromise, that right is much less valuable and important than the portion of the fisheries which the United States would lose by the agreement, even on the terms proposed by them.

No. 7.

Protocol of the sixth conference between the American and British plenipotentiaries, held at Whitehall, on the 9th of October, 1818.

Present: Mr. Gallatin, Mr. Rush, Mr. Robinson.

The American plenipotentiaries declared that they could not agree to the article upon the fisheries brought forward by the British plenipotentiaries at the preceding conference, nor to that respecting the navigation of the Mississippi, nor to any article that would bring the British in contact wth that river.

They also stated that they could not take into consideration the article respecting the intercourse with Nova Scotia and New Brunswick, unconnected with the subject of the British West Indies.

They presented several amendments (A, B) to the articles respecting the boundary line and slaves carried away, proposed at the last conference by the British plenipotentiaries.

It was agreed to meet again on Tuesday, the 13th instant.

ALBERT GALLATIN,
RICHARD RUSH,
FREDERICK JOHN ROBINSON.

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No. 8.

The American to the British plenipotentiaries.

OCTOBER 12, 1818.

Mr. Gallatin and Mr. Rush present their compliments to Mr. Robinson and Mr. Goulburn, and beg leave to state that, on full consideration, since the meeting on Friday, they do not feel themselves authorized to consent to the condition annexed to the second article of the project on impressment, which declares that "none other than the persons whose names shall be included in the said lists shall be deemed to fall within the said exception." Their reasons are stated in the enclosed unofficial memorandum.

Mr. G and Mr. R. give this notice of their disagreement previous to the meeting fixed for tomorrow, in the hope that, if the alteration which they have heretofore proposed should not, contrary to their expectations, be found acceptable, some other amendment or modification may suggest itself to the British plenipotentiaries, rather than that the arrangement should fall through.

No. 9.

Protocol of the seventh conference between the American and British plenipotentiaries, held at Whitehall, on the 13th of October, 1818.

Present: Mr. Gallatin, Mr. Rush, Mr. Robinson, Mr. Goulburn.

The British plenipotentiaries acquiesced in the amendment proposed at the preceding conference by the American plenipotentiaries, in the article respecting captured slaves, except as far as related to the insertion in the article of the name of any particular Power.

They brought forward new articles (A, B, C, D, E) respecting the fisheries, the boundary, impressment, and maritime points, and accompanied the articles D with the annexed memorandum E. They agreed to the omission of the article respecting the Mississippi.

It was agreed to meet again on Monday, the 19th instant.

ALBERT GALLATIN,
RICHARD RUSH,
FREDERICK JOHN ROBINSON,
HENRY GOULBURN.

ARTICLE A.

Whereas differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof, to take, dry, and cure fish on certain coasts, bays, harbors, and creeks of His Britannic Majesty's dominions in America: It is agreed between the high contracting parties that the inhabitants of the said United States shall have, forever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Ramea islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon islands, on the shores of the Magdalen islands, and also on the coasts, bays, harbors, and creeks, from

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Mount Joli, on the southern coast of Labrador, to and through the straits of Belleisle, and thence, northwardly, indefinitely, along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company; and that the American fishermen shall also have liberty, forever, to dry and cure fish in any of the unsettled bays, harbors, and creeks of the southern part of the coast of Newfoundland, hereabove described, and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground. And the United States hereby renounce, forever, any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's dominions in America, not included within the above-mentioned limits: *Provided, however*, That the American fishermen shall be admitted to enter such bays or harbors for the purpose of shelter, and of repairing damages therein, of purchasing wood and obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them.

(Articles B, C, D, and E omitted.)

No. 10.

Amendment to boundary line, proposed by American plenipotentiaries at the eighth conference.

In lieu of the latter part of the article insert:

"And it is agreed that any such country as may be claimed by either party on the northwest coast of America, or on the continent of America westward of the Stony-mountains, shall, together with its harbors, bays, and creeks, and the navigation of all rivers within the same, be free and open, for the term of ten years from the date of the signature of this treaty, to the vessels, citizens, and subjects of the two Powers; it being well understood that this agreement is not to be construed to the prejudice of any claim which either of the two high contracting parties may have to any part of the last-mentioned country; nor shall it be taken to affect the claims of any other Power or State to any part of the said country—the only object of the two high contracting parties, in that respect, being to prevent disputes and differences amongst themselves."

No. 11.

Protocol of the eighth conference between the American and British plenipotentiaries, held at Whitehall, on the 19th of October, 1818.

Present: Mr. Gallatin, Mr. Rush, Mr. Robinson, Mr. Goulburn.

The protocols of the two preceding conferences were agreed to and signed.

The several articles upon the fisheries; the boundary; the territory westward of the Stony Mountains; the captured slaves; and the renewal of the existing commercial convention, were agreed to.

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The American plenipotentiaries expressed their regret that the rejection of several of the amendments which they had offered to the *projet* on impressment, and which they deemed essential, compelled them to decline acceding to that projet.

The great alterations made by the British plenipotentiaries to the articles proposed by the American plenipotentiaries on maritime rights, also induced the latter to think that, although a season of peace appeared the most favorable time for arranging such subjects, it would be inexpedient to discuss them any further, more especially as it had never been the intention of the American plenipotentiaries to adopt or propose any articles upon maritime subjects, without an adjustment of that on impressment.

The British plenipotentiaries brought forward an article, as annexed, (F,) upon the subject of the direct intercourse between the West Indies and the United States of America; but they stated that they could not consent to sign any article upon that subject, unless the American plenipotentiaries were prepared at the same time to accede to articles which should put the intercourse between Bermuda and the United States, as well as between Nova Scotia and New Brunswick and the United States, upon the footing contemplated in the article originally offered by the British Government with respect to Bermuda, and in that respecting Nova Scotia and New Brunswick, brought forward at a former conference by the British plenipotentiaries.

The American plenipotentiaries declared that their instructions did not authorize them to sign the West India article as proposed by the British plenipotentiaries, but agreed to take the whole question *ad referendum* to their Governments.

It was agreed to meet on Friday, the 20th instant.

ALBERT GALLATIN,
RICHARD RUSH,
FREDERICK JOHN ROBINSON,
HENRY GOULBURN.

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No. 12.

Protocol of the ninth conference between the American and British plenipotentiaries, held at Whitehall, on the 20th of October, 1818.

Present: Mr. Gallatin, Mr. Rush, Mr. Robinson, Mr. Goulburn.

The protocol of the preceding conference was agreed to and signed. The plenipotentiaries then proceeded to sign the convention.

ALBERT GALLATIN,
RICHARD RUSH,
FREDERICK JOHN ROBINSON,
HENRY GOULBURN.

John Adams to William Thomas.

QUINCY, *10 August, 1822.*

The grounds and principles on which the third article of the treaty of 1783 was contended for on our part, and finally yielded on the part of the British, were these.

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1. That the Americans, and the adventurers to America, were the first discoverers and the first practisers of the fisheries.

2. That New England, and especially Massachusetts, had done more in defence of them than all the rest of the British empire. That the various projected expeditions to Canada, in which they were defeated by British negligence, the conquest of Louisburg, in 1745, and the subsequent conquest of Nova Scotia, in which New England had expended more blood and treasure than all the rest of the British empire, were principally effected with a special view to the security and protection of the fisheries.

3. That the inhabitants of the United States had as clear a right to every branch of those fisheries, and to cure fish on land, as the inhabitants of Canada or Nova Scotia; that the citizens of Boston, New York, or Philadelphia, had as clear a right to those fisheries, as the citizens of London, Liverpool, Bristol, Glasgow, or Dublin.

4. That the third article was demanded as an ultimatum, and it was declared that no treaty of peace should ever be made without it; and when the British ministers found that peace could not be made without that article, they consented; for Britain wanted peace, if possible, more than we did.

5. We asked no pardon, we requested no grant, and would accept none. We demanded it as a right, and we demanded an explicit acknowledgment of that as an indispensable condition of peace; and the word *right* was in the article as agreed to by the British ministers, but they afterwards requested that the word *liberty* might be substituted instead of *right*. They said it amounted to the same thing, for liberty was right and privilege was right; but the word *right* might be more unpleasing to the people of England than *liberty* and we did not think it necessary to contend for a word. To detail the conferences and conversations which took place for six weeks on this subject, would require volumes, if they could now be remembered. Mr. Jay is the only person now living, who was officially concerned in that negotiation, and I am not afraid to appeal to his memory for the truth of these facts. Lord St. Helens, then Mr. Fitzherbert, though not officially concerned in the negotiation, was instructed by the British minister to assist at our conferences, and he was freely and candidly admitted by us. I dare appeal to his lordship's memory for the truth of these facts. There is another excellent character still living, Mr. Benjamin Vaughan, of Kennebec, who was then a confidential friend of Lord Shelburne, and an intimate friend of the British negotiators, and I dare appeal to his recollection of the representations made to him of the conferences concerning the fisheries, by Mr. Oswald, Mr. Fitzherbert, and Mr. Whitefoord.

6. We considered that treaty as a division of the empire. Our independence, our rights to territory and to the fisheries, as practised before the Revolution, were no more a grant from Britain to us, than the treaty was a grant from us of Canada, Nova Scotia, England, Scotland, and Ireland to the Britons. The treaty was nothing more than mutual acknowledgement of antecedent rights.

If there is any other question that you wish me to answer, I shall be happy to do it, so long as my strength may last. I had omitted what follows.

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7. We urged upon the British ministers that it was the interest of England herself that we should hold fast forever all the rights contained in that article, because all the profits we made by those fisheries went regularly to Great Britain in gold and silver, to purchase and pay for their manufactures; that if it were in her power, which it was not, to exclude us from or abridge these rights, they would be the dupes of their weak policy.

8. That if we should consent to an exclusion, the stipulation would not be regarded; our bold and hardy seamen would trespass; they must keep a standing naval force on the coast to prevent them; our people would fight and complain, and this would be speedily and infallibly the source of another war between the two nations.

Extract from "Memoranda of a Residence at the Court of London," by Richard Rush, published at Philadelphia, 1833.

By the third article of the treaty of September, 1783, between the United States and Great Britain, the people of the former had the RIGHT *to take fish on the Grand Bank, and all other banks of Newfoundland; in the Gulf of St. Lawrence, and all other places in the sea, where the inhabitants of both countries had been used to fish before; and the* LIBERTY *to fish on such part of the coast of Newfoundland as British fishermen used, (but not to dry or cure fish there,) and on the coasts, bays and creeks of all other British dominions in America. American fishermen had also the liberty to dry and cure fish in any unsettled bays, harbours, and creeks of Nova Scotia, Magdalen Islands, and Labrador; but as soon as any of them were settled, this liberty was to cease, unless continued by agreement with the inhabitants.*

These were rights and liberties of great magnitude to the United States. Besides affording profitable fields of commerce, they fostered a race of seamen, conducive to the national riches in peace, as to defence and glory in war. After the peace of Ghent, the fishing vessels of the Union proceeded as formerly to fish off the British coasts, and use the unsettled shores for curing and drying, according to the stipulations of the above treaty. They were immediately ordered off by the British naval forces. Some were captured. The ground alleged was, that the treaty was no longer in existence. The government of the United States obtained a suspension of these apparently hostile orders and proceedings, until the two governments could make efforts for adjusting a question of so much moment.

The British doctrine was, that the treaty of 1783, not being re-enacted or confirmed by the treaty of Ghent, was annulled by the war of 1812.

The United States wholly dissented from this doctrine. They did not deny the general rule of public law on which Britain relied; that a war puts an end to previous treaties; but they insisted that the rule was not applicable to the treaty of 1783. That treaty, was peculiar in its nature and objects. It had no analogy to common treaties and was not to be judged by their rules. It was a

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treaty by which Great Britain had acknowledged the independence of the United States, after a seven years contest in arms. It made two empires out of one. It was a treaty of separation. The rights of each party were laid down as primary and fundamental, in the act of dismemberment which the treaty established. So much of territory and incidental rights in America, were allotted to one, so much to the other. The entire instrument implied permanence. Hence all the fishing rights secured under it to the United States, were placed by Great Britain upon the same foundation with their independence itself. Was her acknowledgement of the latter revoked by the war of 1812? or were the boundaries of the United States as fixed by the treaty of 1783, annulled by that war? So far was this from being the case, that the treaty of Ghent, in making provision for ascertaining with further accuracy some parts of the boundary line, constantly referred to the treaty of 1783; thus manifesting a tacit conviction on each side, that this treaty was regarded as the fundamental law of the relations between the two countries. By what rule then was the war to destroy the treaty in some parts and leave it whole in others? The use of the word *right* in one place and *liberty* in another, could make no difference. A liberty of unlimited duration, secured by so elementary and solemn a deed, was as much a right as if stipulated by any other term. In speaking of rights and liberties in a national sense, both terms were alike efficacious. Liberty might have seemed the more appropriate term where an enjoyment was guaranteed to one party, of a *thing* adjoining territory allotted to the other; but it took nothing from the permanence of the allotment. In point of principle the United States were pre-eminently entitled to all these fisheries; and in point of fact they had enjoyed more of them than any other portion of the British empire before the separation. The people of New England, from their proximity, had been earlier led to the discovery and improvement of the best fishing grounds, and had also, with other parts of the Union, contributed amply in blood and treasure towards winning from France, provinces on the coast of which some of the fisheries were situated. Apart from the question of right, the claim of the United States had high sanctions. These fisheries afforded subsistence to a numerous class of their inhabitants. By the usage of nations, fishermen were a portion of human society whose occupations, contributing to the general welfare of the species, were always regarded with favour. Sometimes they were even exempt from the effects of war while it raged; as when England herself allowed the Dutch to fish upon her coasts at such seasons. The foregoing is a synopsis of the material arguments by which the claim of the United States was defended. Whatever could shed light upon it, had been urged by Mr. Adams when in the English mission, with an ability and fulness that left little to be said after him.

The claim was resisted by Great Britain in a manner to give proof of her equal sincerity in the opposite doctrine. She denied that the treaty of 1783 had any thing in its nature to exempt it from abrogation by a war. She knew of no exception to this rule of international law, and could not consent to give to her diplomatic relations with one state, a different degree of permanence from that on which her connexion with all other states depended. She did not

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admit that this treaty was to be regarded as in force because the treaty of Ghent had referred to it on the subject of boundaries. One object of the latter treaty was, the mutual restoration of territory taken by either party from the other during the war. As a necessary consequence of such a stipulation, each party reverted to their boundaries as before the war; and the treaty of 1783 having fixed these, the treaty of Ghent had referred them as *facts*, nothing more. She contended that it was not unusual for treaties containing recognitions and acknowledgements of perpetual obligation, to contain likewise grants of privileges liable to be revoked. The treaty of 1783 contained provisions of different characters; some in perpetuity; others from their nature, temporary. If it were inferred because some of the advantages specified would not be lost by a war, that therefore all were designed to be permanent, it ought first to be shown that the advantages themselves were the same; or at least of similar character. But what necessary connexion was there between a right to national independence, and a liberty to fish within British jurisdiction, or use British territory? Liberties within British limits, were as capable of being exercised by a dependent, as an independent state; they could not therefore be the necessary consequence of independence. The independence of a nation was that which could not be correctly said to be granted by a treaty, but to be acknowledged by one. In the treaty of 1783 the independence of the United States was acknowledged by Great Britain, as it had already been by the powers of Europe; and by Britain herself, in her previous consent in November 1782, to enter into provisional articles. Their independence might have been acknowledged without either the treaty or provisional articles; but by whatever mode acknowledged, the acknowledgement was, in its nature, irrevocable. A power of revoking or even modifying it, would be destructive of the thing itself, and was therefore necessarily renounced when the acknowledgement was made. She urged as corroborative of her reasoning, notwithstanding the explanations suggested by the American plenipotentiaries, the use of the word RIGHT when the United States were to take fish on the banks, and other places from which Great Britain could not pretend to exclude any independent nation, and LIBERTY when they were to cure and dry within British territory. The latter was also made to depend on agreements with the proprietors of the soil, whenever the territory might become settled. As to the origin of the fishing privileges in point of fact, she admitted that whilst the United States made part of the British dominions, their inhabitants had the enjoyment of them in common with other British subjects; but they had at the same time, like British subjects every where, duties to perform. When therefore the United States, by their separation from Great Britain, became released from the duties, they became excluded also from the privileges of British subjects. The above is a summary of the reasoning in its chief parts, against our claim. It was embodied in a paper by Lord Bathurst, in October 1815, prepared with the force and zeal that the subject demanded. The views of each party on the question, had not been left out of sight in negotiating the treaty of Ghent.

To the distinction so much insisted on by Great Britain between LIBERTY and RIGHT, it was replied for the United States, that

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the former, if construed to imply limitation of time, or precariousness of tenure, would defeat the whole meaning of the article as gathered from the context. The restriction itself at the close of the article, stamped permanence upon it. The intention was, that the people of the United States should continue to enjoy all the benefit they had formerly enjoyed from the fisheries, with the exception of drying and curing on the shores of *Newfoundland;* but when *other* shores on which they were to have this liberty, became settled, *then* its exercise was to be conciliated with the proprietary rights of the owners of the freehold. This was precisely the restriction to which British fishermen would be liable. Whence it followed, that the argument against permanence on account of the word LIBERTY being used, if applicable to the inhabitants of the United States, would also be applicable to the subjects of Britain. The argument therefore by proving too much, proved nothing. The principles of municipal law in England, which were the same in the United States, corroborated the interpretation for which the latter contended. By these, the property of a fishery was not necessarily in the owner of the soil. The right to the soil might be exclusive; the fishery, free or in common. Thus, whilst in this partition of the national possessions in America, *the jurisdiction over the shores* where the fisheries were situated was reserved to Great Britain, the fisheries themselves and accommodations essential to their prosecution and enjoyment, were, by the mutual compact, agreed to be in common. How different the course adopted in the treaty of Utrecht on a similar point. By the twelfth article of that treaty, Nova Scotia was ceded to Britain; yet the subjects of France were expressly excluded from fishing within thirty leagues of the coast. This prohibition was renewed in the fifth article of the treaty of Paris of 1763. By the eighteenth article of the same treaty, the subjects of Spain were excluded from all fishing rights in the neighborhood of Newfoundland. The treaty of 1783 was, therefore, it was again insisted, altogether unlike common treaties. It contemplated a permanent division of coequal rights, not a transient grant of mere privileges. The acknowledgement of independence, the establishment of boundaries, and the guarantee of the fisheries, each rested upon the same immutable basis.

Neither side yielded its convictions to the reasoning of the other. This being exhausted, there was no resource left with nations disposed to peace, but a compromise. Great Britain grew willing to give up something. The United States consented to take less than the whole. After various proposals by the former, which the latter rejected as inadequate, we at length, as their plenipotentiaries, acceded to the following: viz.

That the United States *should have*, FOREVER, *in common with British subjects, the liberty to fish on the southern coast of Newfoundland, from Cape Ray to the Rameau Islands; and from that cape to the Quirpon Islands on the western and northern coasts; and on the shores of the Magdalen Islands; and on the coasts, bays, harbours and creeks from Mount Joli, on the southern coast of Labrador, through the Straits of Belleisle, and thence indefinitely along the coast, northwardly; but without prejudice to any exclusive rights of the Hudson Bay Company; Also the liberty*, FOREVER, *to dry and cure fish in any of the unsettled bays, harbours and creeks of the*

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southern coast of Newfoundland, as above described; and of the coast of Labrador; subject, after settlement, to agreement with the proprietors of the soil. In consequence of the above stipulations, the United States renounced forever the liberty of fishing within three miles of any other part of the British coasts in America, or of curing or drying on them. But American fishermen were to be permitted to enter bays or harbours on the prohibited coasts for shelter, repairing damages, and obtaining wood and water, subject to restrictions necessary to prevent abuses.

Such was the article finally agreed upon. The most difficult part of our task, was on the question of permanence. Britain would not consent to an express clause that a future war was not to abrogate the rights secured to us. We inserted the word *forever*, and drew up a paper to be of record in the negotiation, purporting that if the convention should from any cause be vacated, all anterior rights were to revive. The insertion of any words of perpetuity, was strenuously resisted by the British plenipotentiaries. They said that in case of war, the only effect of their omission would be the necessity of providing in the treaty of peace, for the renewal of the right. We replied that we could agree to no article on the subject, unless the word *forever* was retained; or if any counter record was made on the protocol impairing its effect.

It was by *our* act that the United States *renounced* the right to the fisheries not guaranteed to them by the convention. That clause did not find a place in the British counter-projet. We deemed it proper under a threefold view; 1, to exclude the implication of the fisheries secured to us being a new grant; 2, to place the rights secured and renounced, on the same footing of permanence; 3, that it might expressly appear, that our renunciation was limited to three miles from the coasts. This last point we deemed of the more consequence from our fishermen having informed us, that the whole fishing ground on the coast of Nova Scotia, extended to a greater distance than three miles from land; whereas, along the coasts of Labrador it was almost universally close in with the shore. To the saving of the exclusive rights of the Hudson's Bay Company, we did not object. The charter of that company had been granted in 1670, and the people of the United States had never enjoyed rights in that bay that could trench upon those of the company. Finally, it is to be remarked, that the liberty of drying and curing on certain parts of the coast of Newfoundland, as secured in the article, had not been allotted to the United States even under the old treaty of 1783.

When the convention was made public, it underwent criticism in Britain as too favourable, throughout, to the United States. But this article on the fisheries, was assailed with peculiar force. The leading presses of London, opened their batteries against it. The claims of the United States were described as of frightful magnitude; the concessions by England, as of a character corresponding. Important maritime interests of the British empire, were said to have been sacrificed. Complaints poured in from the colonies. The legislative assembly and council of Nova Scotia, sent forward remonstrances, with which were mixed up, not unsparingly, charges of American ambition and encroachment. The tide of complaint was swelled by the recollection of similar alleged sacrifices under the treaty of Paris of 1814.

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Britain by that treaty, said the journals, had given back, and this when she was at the height of influence and power, to France, her great European rival, the enjoyment of the Newfoundland fisheries, from which twenty years of victorious warfare upon the ocean had totally driven her; and now the calamity was to be doubled, by a like gift to her rival in the other hemisphere!

British statesmen, more calm, thought and acted otherwise. They had not been deterred by the anticipation of clamor from entering into the article. They felt that if they had a duty to fulfill by guarding British interests on the one hand, they were not released from the obligation of looking to the just rights of an independent nation on the other. It was in this spirit that a formidable cause of collision was removed, without impairing the honour, or, as is believed, the essential interests of either country.

Yet it is proper for the United States to bear in mind, that Great Britain still holds to the doctrine that the war of 1812 totally abrogated the original treaty of 1783 on the question of the fisheries; the inference from which may be, that she would also hold this convention of 1818 to be abrogated on the same point by a future war, notwithstanding our insertion of words of perpetuity. Hence, apart from the historical interest of this part of the negotiation, there is an existing interest in it from the contingent importance of the same question in time to come.

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SUBSEQUENT TO THE TREATY OF 1818.

PERIOD FROM 1818 TO 1836.

Mr. Adams to Mr. Canning.

DEPARTMENT OF STATE,
Washington, June 26, 1823.

SIR: I have the honor of enclosing herewith copies of a complaint and protest received at this department, stating the capture and detention of the schooner *Charles*, a fishing vessel belonging to George Moody, of York, in the State of Maine, a citizen of the United States. This detention is stated to have been altogether without cause, and to have been effected by Captain Arabin of a British gun-brig called the *Argus*. It appears the schooner *Charles* has neither been restored to its owner nor carried before any tribunal for adjudication. I am directed by the President of the United States to solicit your good offices in the first instance to obtain the restitution of the schooner *Charles* to Mr. Moody, and in the next to claim the satisfaction and indemnity due all the sufferers by the interruption of their voyage and the disturbance in their lawful occupations, and all other damages sustained by them in consequence of these acts, to which should be added the reparation to the United States for the indignity offered to their flag and the injuries inflicted upon their citizens.

I pray you, sir, to accept the assurance of my distinguished consideration.

JOHN QUINCY ADAMS.

The Right Honorable STRATFORD CANNING,
Envoy Extraordinary and Minister Plenipotentiary from Great Britain.

[Inclosure.]

Mr. Moody to Mr. Adams.

YORK, MAINE, *June 12, 1823.*

SIR: I would refer you to the enclosed protest for the particulars of an outrage committed on my property by the commander of a British brig, and pray that you would lay the same before the proper authorities that measures may be immediately taken to restore to me my property.

I am, respectfully, sir, your obedient servant,

GEO. MOODY.

Hon. JOHN Q. ADAMS,
Secretary of State, Washington.

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[Sub-inclosure.]

By this public instrument of declaration and protest, be it known that William Stover, of York, in the county of York and State of Maine, mariner, and late master or skipper of the schooner called the *Charles*, of York aforesaid, of the burden of forty tons or thereabouts, owned by George Moody, of said York, merchant; and Josiah Stover, Solomon Avery, Theodore Webber, jr., William Simpson, jr., and Hanson Forgerson, all of York aforesaid, fishermen, employed and engaged on board said schooner for the present fishing season, personally appeared and came before me, Alexander McIntire, notary public within and for the county of York and State of Maine, who did on this tenth day of June, in the year of our Lord one thousand eight hundred and twenty-three, severally solemnly protest and declare, allege and affirm that having previously engaged with the said George Moody, the owner of said schooner *Charles*, to go in her for the present fishing season, and said vessel being fitted out in York with all things necessary to prosecute said fishing voyage and under fishing license, we sailed from said York on the 4th day of May last past on our said voyage, and in prosecution of our said voyage we sailed to the coast of Nova Scotia and came to anchor for the first time after leaving York, about eight leagues south-south-east from Shelburne on said Nova Scotia coast, on Thursday the 8th day of May, at which place we lay till Friday morning, May 9th, at about nine o'clock. The wind blowing very fresh from the ESE. and a heavy sea, we found that we could no longer lay at anchor, but found that we were drifting fast to leeward, and fearing an approaching storm, which actually took place the following day, we were obliged to put into Shelburne for a harbor to avoid the winds and seas. We caught sixty-eight codfish and three herring only while we lay at anchor as before mentioned, which were all the fish we caught after we left York. We got into Shelburne about 12 o'clock at noon on the same day and came to anchor. About an hour after we came to anchor in Shelburne, the British gun-brig called the *Argus*, which, as we were told, was commanded by Captain Arabin, hove in sight and soon after came into Shelburne and came to anchor, having previously sent her barge manned with an officer and six men to us, who boarded us, took possession of our schooner and ordered us to heave up our anchor immediately and go alongside of the British brig. The master or skipper was ordered to go on board said brig with the schooner's papers, and after being detained on board said brig about a quarter of an hour was sent on board the schooner again, having had his papers taken from him. The boat was taken from off our deck and carried alongside the said brig the same day. We lay alongside said brig till Monday, the 12th day of May, when four of our crew, namely, William Simpson, jr., Theodore Webber, jr., Solomon Avery and Hanson Forgerson, were taken from the schooner and put aboard the said brig; and two officers and seven men were put aboard the schooner, and the said master or skipper and Josiah Stover were kept on board said schooner. The officers and men put on board said schooner were armed with small arms and cutlasses, victualed for twenty days.

The brig proceeded to St. John's, where she landed the said William Simpson, jr., Theodore Webber, jr., Solomon Avery and Hanson

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Forgerson, destitute of money or clothing, excepting what clothing they had on their backs. We, the said William Stover and Josiah Stover, further protest, affirm and declare, that we were detained on board the said schooner *Charles* on a cruise of nine days in the Bay of Fundy; during which cruise she took two fishing vessels belonging to the United States and carried them into St. John's, and was there again victualed for another cruise of twenty days; and after laying one day at St. John's she then sailed on her second cruise; and on the 22d day of May last we were landed from said schooner at Campo Bello, where all the fishermen's clothes were given up to the said master or skipper.

We further declare and say, that after we sailed from York, on the 4th day of May, as before named, till we were boarded and taken possession of by the said brig *Argus*, no person was on board our said schooner, except our said crew, nor were any of the said crew of said schooner on shore at any place, and our boat was not taken from our deck after leaving York till it was taken off by order of the officers of the brig *Argus*, nor was any article taken out of said schooner, from the time we left York till she was taken possession of as before named.

Therefore the said William Stover and his said crew, to-wit: Josiah Stover, Theodore Webber, jr., William Simpson, jr., Solomon Avery, and Hanson Forgerson, did declare and protest, as by these presents they do most solemnly protest, against the commander and crew of the said brig *Argus*, and against every person concerned in the capture of said schooner *Charles*, for arbitrarily, unlawfully, unjustly and cruelly taking said schooner, as no just or legal cause existed to justify said taking and detention.

WILLIAM STOVER
THEODORE WEBBER, jr.,
WILLIAM SIMPSON, jr.,
JOSIAH STOVER,
SOLOMON AVERY,
his
HANSON × FORGERSON
mark

STATE OF MAINE, *York, ss:*

The within named William Stover, Theodore Webber, jr., William Simpson, jr., Josiah Stover, Solomon Avery and Hanson Forgerson, personally appeared before me, Alexander McIntire, notary public within and for the county of York, and entered the foregoing public declarations and protest by them severally subscribed, and made solemn oath that all the facts therein stated by them severally are true.

In witness whereof, I have hereunto subscribed my name and affixed my notarial seal, this 10th day of June, in the year of our Lord one thousand eight hundred and twenty-three.

(L. S.) ALEXANDER MCINTIRE,
Notary Public.

A true copy from the original,
Attest:
ALEXANDER MCINTIRE,
Notary Public.

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Mr. Canning to Mr. Adams.

BALTIMORE, *July 1, 1823.*

SIR: In acknowledging the receipt of your official letter, dated the 25th ultimo, enclosing copies of a complaint and protest received at your department with reference to the capture and detention of the schooner *Charles*, a fishing vessel belonging to George Moody, of York, in the State of Maine, a citizen of the United States, I have only to mention at the present moment, that, agreeably to your request for the exertion of my good offices in the case, it will afford me pleasure to take an early opportunity of referring the papers, which you have done me the honor of communicating, to the proper authorities, for the purpose of effecting a more particular inquiry into the circumstances of George Moody's complaint and attaining the ends of justice in a spirit according with the friendly relations established between our respective countries.

I request, sir, that you will accept, on this occasion, the assurance of my distinguished consideration.

STRATFORD CANNING.

The Hon. JOHN QUINCY ADAMS,
Secretary of State.

Mr. Addington to Mr. Adams.

WASHINGTON, *October 12, 1823.*

SIR: In reference to a letter addressed by you to Mr. Stratford Canning, dated the 25th of June last, enclosing copies of a "complaint and protest received at the Department of State, stating the capture and detention of the schooner *Charles*, a fishing vessel belonging to George Moody, of York, in the State of Maine, and soliciting Mr. Canning's good offices, in the first instance, to obtain the restitution of the said schooner, and in the next, to claim the satisfaction and indemnity due to all the sufferers by the interruption of their voyage," to which, you subjoin, "should be added the reparation to the United States for the indignity offered to their flag, and the injuries inflicted upon their citizens," I have the honor to transmit, for your information, a copy of a letter which I have just received from the rear admiral commanding his majesty's ships on the Halifax station, covering several other documents, from various authorities, in reference to the case above mentioned.

On perusing this correspondence, you will, I trust, sir, be satisfied that the seizure and subsequent condemnation of the schooner *Charles* took place upon strictly legal grounds.

By the report of Captain Arabin it appears that the said schooner was found at anchor in Shelburne harbor, into which *she had not been driven by stress of weather.* From that harbor she had already sailed once, after having previously anchored there, and *had returned a second time*, before she was captured by the *Argus*, *the weather being fine and moderate the whole time.* She was accordingly de-

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tained by Captain Arabin, for a breach of the act 59 George III., chapter 38, passed for the protection of the British fisheries, in conformity with the stipulations of the Convention concluded between his majesty and the United States on the 20th October, 1818. On the same grounds that vessel was subsequently condemned by the vice admiralty court, at St. Johns, in the province of New Brunswick.

With regard to the equipping of the said schooner, by the captain of the *Argus*, and despatching her in quest of smugglers, you will observe, sir, that admiral Fahie acknowledges that act to have been irregular; but he at the same time states that irregularity to have been practised then for the first time, and announces that he has taken measures for preventing the recurrence of it.

With so frank an acknowledgment, I feel assured, sir, that you will be perfectly satisfied. The rest of the case is so clear as to render all further comment or explanation entirely superfluous.

I beg, sir, that you will accept the assurance of my distinguished consideration.

H. U. ADDINGTON.

The Hon. JOHN QUINCY ADAMS,
Secretary of State.

[Inclosure.]

Rear Admiral Fahie to Mr. Addington.

HIS MAJESTY'S SHIP *Salisbury*,
Halifax, September 5, 1823.

SIR: On the 2d of last month I received a letter from Mr. Canning, dated Philadelphia, July 5, enclosing copies of a complaint and protest given in to the government of the United States by an individual named George Moody, a citizen, as he is described, of the United States, relative to the detention of the American schooner "*Charles*," by his British Majesty's sloop the "*Argus*," and requesting me to afford him such information respecting the case as would enable him to place it in a proper light.

Previously to my receipt of Mr. Canning's letter, Captain Arabin, who commanded the *Argus* when the detention of the schooner occurred, had returned to England—a circumstance which obliged me to draw from other sources the particulars of her detention, and of the subsequent proceedings in the vice-admiralty court at New Brunswick, which have been followed by her condemnation.

Mr. Canning's departure for Europe causes me to avail myself of the intimation of your appointment as charge d'affaires ad interim, contained in his letter to me of the 24th June, to forward for your information and that of the American government, copies of several documents, as particularized at the foot of this letter, which go to contradict, in material points, the statements made in the protest, and will, I trust, sir, furnish sufficient evidence that the *Charles* was detained and proceeded against on legal grounds.

The manning, however, and sending her "down the bay in pursuit of smugglers," which is admitted in the report of Mr. Innes, the

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first lieutenant of the *Argus*, was certainly irregular; and, if she had been acquitted, it would probably have induced the court to award a proportional remuneration to the claimants. It is the first instance of such a proceeding that has come within my knowledge, and I have taken measures to prevent its recurrence.

I have the honor to be &c.,

W. C. FAHIE,
Rear Admiral & Commander in Chief.

HENRY U. ADDINGTON, Esq.
His British Majesty's Charge d'Affaires.

[Sub-inclosure 1.]

Commander Dundas to Rear Admiral Fahie.

HIS MAJESTY'S SLOOP *Argus*,
Halifax, August 11, 1823.

SIR: In compliance with the orders contained in your letter of the 6th instant, I have called upon the officers of his Majesty's sloop *Argus*, under my command, who had anything to do with the seizure and detention of the schooner *Charles*, American fishing vessel, and I beg leave to enclose for your information a detail of the circumstances of this case, as delivered to me by the respective officers; as also an extract from the *Argus'* logbook of the 9th of May, 1823.

I have the honor to be, &c.,

JOHN B. DUNDAS, *Commander.*

To Rear Admiral FAHIE, C. B.
Commander in Chief.

[Sub-inclosure 2.]

Midshipman Trouch to Commander Dundas.

HIS MAJESTY'S SLOOP *Argus*,
Halifax, August 11, 1823.

SIR: In compliance with your order to make known to you such particulars as I may be acquainted with, relative to the schooner *Charles*—American fishing vessel—I beg leave to state, that, having been ordered by Captain Arabin, on the 9th of May, 1823, to board the said schooner, lying in Shelburne harbor, I went in the gig, manned by four seamen and the corporal of marines, and, having boarded, demanded her papers. I inquired what brought him *within* the *limits?* And the master replied, to avoid a storm. How long he had been at anchor. He replied, he had but just anchored. I then ordered the master to weigh; and, according to the orders I had received from Captain Arabin, anchored close to the *Argus*. I was ordered on board, and to bring the master and schooner's papers with me.

I am, sir, &c. HENRY TROUCH, *Midshipman.*

Captain JOHN B. DUNDAS,
His Majesty's Sloop Argus.

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[Sub-inclosure 3.]

HIS MAJESTY'S SLOOP *Argus*,
Halifax, August 10, 1823,

Being ordered by Captain Arabin, on the 9th of May to take charge of the American schooner *Charles* and proceed along the coast to St. John's, New Brunswick, and detain such unlawful vessels as I might meet in my way, I sailed from Shelburne on the 12th of May, and, on my way to St. John's, detained one English and one American schooner, and arrived at St. John's on the 20th of May, at which place I was taken out of the schooner *Charles* and she was delivered into the custom-house.

H. LEGARD, *Midshipman.*

[Sub-inclosure 4.]

Lieutenant Innes to Commander Dundas.

HIS MAJESTY'S SLOOP *Argus*,
Halifax, August 11, 1823.

SIR: In obedience to your orders to make known to you such particulars as I may be acquainted with relative to the American schooner *Charles*, I beg leave to state that on the arrival of his Majesty's sloop *Argus*, at Shelburne, on the 9th of May, 1823, the *Charles* was at anchor in that port, and was boarded by Mr. Henry Touch, (midshipman,) and brought to an anchor close to the *Argus*, by Captain Arabin's order. She was detained in the usual way, but I am not acquainted with the circumstances of her detention. I believe it was owing to information received from the shore of her having committed some breach of the treaty.

On the *Argus* sailing on the 12th of May, she was given in charge of Mr. Legard, midshipman, to proceed to St. John's, New Brunswick, and the crew, their clothes and provisions, with the exception of the master, were, at their own request taken on board the *Argus* for a passage to St. John's. The master afterwards requested that his brother might accompany him in the *Charles*, which was granted. They were landed with their clothes at St. John's, New Brunswick, on the *Argus's* arrival on the 16th of May.

On the 20th, the *Charles* arrived and was reported to the collector of the customs for libelling. On the 21st she was manned and given in charge of Mr. Hugh Bowers, midshipman, and sent down the bay in quest of smugglers; when the master requested a passage, he was taken on board and landed at Campo Bello, about two miles distant from Moose island, (United States;) on the 7th of June the *Charles* again joined the *Argus*, and was ordered to St. John's, where she was given up to the collector of his Majesty's customs for legal adjudication.

I am, sir, &c.,
D. B. INNES,
First Lieutenant his Majesty's sloop Argus.

Captain JOHN DUNDAS,
His Majesty's sloop Argus.

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[Sub-inclosure 5.]

Extract from the log-book of the proceedings of His Majesty's sloop Argus—Septimus Arabin, Esq., Captain.

H.	K.	F.	Courses.	Winds.	Signals.	Remarks, &c. Friday, 9th of May, 1823.
1						A. M. Moderate and hazy weather. At 4, light winds and fine weather. At 5.40, got under weigh and made sail; unbent the main-top gallant sails to repair, and bent another. At 8, moderate breezes and cloudy; Hope Island W. by S. ½ S., Matson N. by E. ½ E. At 8.30, set the studding sails. At 10, in ditto, and hove to; hoisted out the 2d cutter, and sent her in shore, through the Ragged Islands, to examine some small vessels at anchor. Bore up. 10 30; hove to, and sent the gig in shore to examine vessels; bore up for Shelburne Harbor. At noon, moderate and cloudy; opened a cask of beef.
2		At anchor in Liverpool Harbor.		N. E	E. P	
3						
4						
5						
6						
7		Running along shore.	S. W. ½ S.			
8						
9	4–4		W. by S. ½ S.		D. B. S	
10						
11		Running for Shelburne.			W. N. T	
12						
1		Running into Shelburne Harbor.				Bearings and distance: Bell Rock N. by W. ½ W., ½ mile; light-house W. by S.
2						
						P. M. Moderate breezes and cloudy. At 12.30, boarded and detained an American fishing vessel, the Charles. At 1.20, shortened sail and came to, with the small bower, in Shelburne Harbor; Sandy Point E. N. E. 1½ mile; Shelburne N. N. E. a red store-house E. ½ N. At 4, fresh breezes and cloudy. Our boats returned with two American fishing vessels detained by them. At 8, fresh breezes and cloudy. At midnight, moderate and cloudy.
3						
4						
5				S. E. by E		
6		At anchor in Shelburne Harbor.			E. P	
7					D. B. S	
8				S. E		
9					W. N. T	
10						
11						
12					E. P	

EDWARD POTTER, *Master.*

[Sub-inclosure 6.]

Collector Wright to Rear Admiral Fahie.

CUSTOM HOUSE,
St. Johns, N. B., August 23, 1823.

SIR: I have this moment had the honor to receive your letter of the 13th inst., stating that a complaint and protest of George Moody, master of the American fishing schooner *Charles*, had been transmited to you by his Majesty's envoy extraordinary in the United States, respecting the seizure of that vessel by his Majesty's sloop *Argus*; and of Captain Arabin having employed the said schooner as a cruizer; and you request me to give you all the information on these subjects in my power.

I accordingly beg leave to refer you to the enclosed copy of a paper transmitted to me by Captain Arabin on his arrival in this port, dated the 16th day of May last, which contains a full detail of the cause of the seizure, under which she was subsequently libelled in the vice-admiralty court here and condemned on the 17th of July last.

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As to that part of the complaint of Captain Arabin having manned and employed the schooner to cruize, I have no knowledge of that circumstance and am inclined to think it is incorrect.

I have the honor to be, &c.,

H. WRIGHT, *Collector.*

W. C. FAHIE, Esq., C. B.,
Rear Admiral and Commander-in-Chief, Halifax.

[Sub-inclosure 7.]

Report of Captain Arabin of H. B. M. sloop "Argus."

MEMORANDUM OF PARTICULARS OF SEIZURE BY THE ARGUS OF THE AMERICAN FISHING VESSEL CHARLES, ON THE SOUTH COAST OF NOVA SCOTIA.

The American fishing schooner *Charles*, William Stover, master, belonging to York, state of Maine, detained by the *Argus* at Shelburne on Friday, 9th of May, 1823, for a breach of the act of 59 Geo. III, chapter 38, for the protection of the British fisheries, and to enable his Majesty to make regulations respecting the same, according to a convention made between his Majesty and the United States, 20th October, 1818. The said schooner was found at anchor in Shelburne harbor, into which she had not been driven by stress of weather or any other fortuitous circumstance. Information had been received of this schooner having put into that same harbor on the Tuesday previous to the seizure, and anchored below Sandy Point, *the weather being fine and moderate at that time, as well as on the day of seizure.* She went out on Wednesday and returned again on Thursday, where she was found by the *Argus* on Friday; and *having remained hovering* upon the coast instead of proceeding on her fishing voyage, when there was no pretence whatever for her putting into port, she was detained.

SEPTIMUS ARABIN.

His Majesty's sloop Argus, at St. John's, N. B., May 16, 1823.

Mr. Addington to Mr. Adams.

WASHINGTON, *June 10, 1824.*

SIR: In reference to the subject of a letter which I had the honor to address to you on the 12th of October last, namely, the detention by Captain Arabin of his Majesty's ship *Argus*, and illegal employment as a British cruizer of the American fishing schooner *Charles*, on which I subsequently, in pursuance of instructions from home, gave you verbally the assurance "that orders would be issued by his Majesty's government, that any American vessel detained by the *Charles* while thus irregularly employed, should be restored to the owner, even although liable on other grounds to be condemned;" I have now the honor to inform you that an inquiry having been insti-

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tuted into this subject by orders of the admiralty, it has been found that only one American vessel, the *Dolphin*, was detained by the *Charles* previous to her adjudication, and that the requisite intimation for the restoration of that vessel has been made to the proper authorities, in conformity with the assurance thus given to the United States government on the part of his Majesty's ministers.

I have the honor to be, with distinguished consideration, your most obedient humble servant.

H. U. ADDINGTON.

To Hon. JOHN QUINCY ADAMS, &c., &c.

Mr. Brent to Mr. Addington, dated September 8, 1824.

SIR: I have the honor to transmit to you three memorials from sundry citizens of the United States, belonging to the State of Maine, accompanied by seven protests and affidavits, which exhibit the nature and extent of the facts referred to by the memorialists, complaining of the interruption which they have experienced during the present season in their accustomed and lawful employment of taking and curing fish in the Bay of Fundy and upon the Grand Banks, by the British armed brig *Dotterel*, commanded by Captain Hoar, and another vessel, a provincial cutter of New Brunswick, acting under the orders of that officer; and earnestly soliciting the interposition of this Government to procure for them suitable redress. With this view I was charged by the Secretary, before his late departure from this city, to communicate to you the above papers, and to request your good offices towards obtaining for the sufferers the indemnity to which they appear to be so well entitled, not only from the peculiar nature and extent of the injuries and losses of which they complain, proved and illustrated as they are by the series of protests and depositions accompanying their memorials, but from the serious violation of the rights and liberties of the citizens of the United States which they involve, in the use of the same fisheries; and I have the honor, accordingly, to request that you will have the goodness to make such representations to the commanding officer of the naval forces of your Government on that station, or to the colonial Government of New Brunswick, as may be available, not only for the relief of the memorialists, but for the prevention of similar interruptions in future.

I have the honor to be, with distinguished consideration, sir, your obedient and very humble servant,

DANIEL BRENT.

MEMORIALS, ETC., ENCLOSED.

Memorial of Aaron Hayden, Kilby, and others, July 27, 1824.
Memorial of J. G. Faxon.
Memorial of Aaron Hayden, John Burgin, and others.

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Memorial No. 1.

To the Hon. JOHN QUINCY ADAMS,
Secretary of State for the United States:

The memorial of the undersigned, merchants and ship owners, residing at Eastport, in the county of Washington and State of Maine, respectfully represents:

That your memorialists during the present year have invested a larger amount of property in vessels than they have heretofore done, for the purpose of carrying on the business of fishing; that the industry and enterprise of our seamen have been unusually directed to the employment of taking and curing fish, under the encouraging and beneficial laws of their country; and that, without interruption from a foreign power, their labors would have been crowned with success, and they would have enjoyed the fruits of their toil.

But your memorialists have to regret the necessity which compels them to state to the honorable Secretary their grievances, and requires of them to seek redress, through him, for the many acts of violence and injustice which have been committed by his Britannic Majesty's brig *Dotterel*, commanded by Captain Hoar, in total disregard and in violation of the subsisting treaty between the two Governments. Your memorialists, premising that the American fishermen in the Bay of Fundy, for these two or three years last past, have been interrupted and taken by British armed vessels, while fishing agreeably to the provisions of the treaty, beg leave respectfully to state that, during the present year, the British armed brig *Dotterel* has captured nine sail of fishing vessels and sent some of them into the province of New Brunswick for adjudication, while others have been converted into tenders, without trial, for the purpose of better molesting our fishermen. They have insulted and abused the crews, turned them on shore in a foreign country, entirely destitute and without the means of returning to their homes, and have said, repeatedly, that they would take American fishermen wherever they were to be found, and without regard to the treaty.

That the brig's barge has come into the wharf at Eastport, and taken and carried away two boats laden with flour.

That the American fishermen have been so molested on the fishing ground in the Bay of Fundy, common to both countries, that they dare not again attempt to avail themselves of the rights and privileges secured to them by treaty, and which are well defined and well understood by every fisherman; and inasmuch as they are debarred the privilege of making a harbor, for the purposes of shelter, and to purchase wood and procure water, it operates as a deprivation of a great and important benefit, which they feel that they have a right to enjoy without interruption.

That, unless something be done for the protection of our fishermen, your memorialists believe that many vessels of this and the neighboring States will be captured or thrown out of employ, with great injury to private interest, and not without an infringement of public rights.

Referring the honorable Secretary, therefore, to the annexed affidavits of the masters of three of the captured vessels, and holding ourselves responsible for the truth of the above allegations, your

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memorialists respectfully request that some prompt and efficient measures may be adopted by our Government to protect us in our rights and pursuits, and that our fishermen may not be molested, nor our shores invaded with impunity by the subjects of any foreign power.

AARON HAYDEN,	JOHN DAVIS,
JOHN BURGIN,	BUCKNAM & GUNNISON,
SAMUEL WHEELER,	DANIEL KILTY,
GEORGE HOBBS,	SAMUEL STURNS,
ELIJAH D. GREEN,	O. S. LIVERMORE,
JOSEPH C. NOYES,	EDWARD BAKER,
N. F. DEERING,	G. LAMPREY,
H. T. EMERY,	BENJAMIN B. LEAVITT,
LORENZO SABING,	JAMES M. LINCOLN,
JONATHAN BUCK,	JOHN T. JONES,
EZEKIEL PRINCE,	NATHAN BUCKNAM,
ISAAC HOBBS,	THOMAS GREEN,
JOHN WEBSTER,	BENJAMIN BUCKNAM,
EDWARD ILSLEY,	JOHN SHAW,
JOHN NORTON,	CALEB CHACE,
CHARLES BROOKS,	W. EUSTIS,
JERRY BUNAIN,	WILLIAM M. BROOKS.
ABEL STEPHENS,	

JULY 27, 1824.

[Inclosure 1 in Memorial No. 1.]

EASTPORT, *July 27, 1824.*

I, Robert Small, master of the schooner *Reindeer*, of Lubec, do testify, declare, and say: That I sailed from Lubec, in the State of Maine, in the above schooner, on July 22, 1824, on a fishing voyage in the Bay of Fundy. On Sunday, July 25, finding our water very bad, went into a harbor in an uninhabited place called "Two Islands," near Grand Menan, for the purpose of procuring a fresh supply of wood and water. That we picked up about one cord of drift wood from off the beach of said island and filled two barrels of water from a spring or brook on said island. And on Monday morning following, about four o'clock, got under way and towed out of the harbor, it being calm; and when from one to two miles from the shore we were boarded by a barge from the British man-of-war brig *Dotterel*, containing nine men with arms, &c., commanded by an officer from said brig of the name of Jones, who took possession of my vessel and papers, and brought her to anchor, menacing myself and crew with violence, threatening our lives, &c. They then took out all our crew with the exception of myself, put them on board the schooner *Friend*, Coggins of Lubec, which vessel they also captured and made a cartel of, as they termed it, manned my vessel and ordered her for St. Andrew's, New Brunswick.

While on our voyage we had caught no fish within from six to eighteen miles from shore. We had no goods or merchandise on board, nor did we go into a harbor for any other purpose than to procure wood and water.

ROBERT SMALL.

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STATE OF MAINE, *Washington, ss.*

Then personally appeared the said Robert Small, and made solemn oath that the foregoing statement by him subscribed was true. Before me,

FREDERICK HOBBS, *Justice of the Peace.*

[Inclosure 2 in Memorial No. 1.]

EASTPORT, *July 27, 1824.*

I, Elisha Small, of Lubec, Maine, on oath declare and say: That on the 7th of July instant I left Lubec as master of the schooner *Ruby*, on a fishing voyage in the Bay of Fundy; and on the 25th of July, being nearly destitute of wood and water, we made for the outer islands lying near Grand Menan, and, finding the sea so heavy that we could not land, we went into the harbor of the "Two Islands," so called, to get a supply. We got in there between three and four o'clock p. m., when I sent my boat and seven hands to fill water and get wood. We got one boat load of drift wood and filled four barrels of water, when daylight shut in and we had not time to get more. The wind died away calm, and we could not get out of the harbor again that night. The next morning we got under way with a very light wind, and got out of the harbor, and it died away calm again. We were then boarded by a barge belonging to the British armed brig *Dotterel*, commanded by an officer of said brig by the name of Jones, and having on board nine men armed with guns, cutlasses, dirks, and pistols. Jones demanded my papers, which I delivered up, and ordered my crew forward; told his men to go down and search the vessel; they found nothing but fish, and salt, and fishing gear. He then told my crew to take their dunnage, ordered them on board the fishing schooner *Diligent*, which had previously been taken, and sent Captain Fickett of the *Diligent* to Lubec with the men. We had no merchandise on board the said schooner *Ruby;* had not caught a fish or attempted to catch one within five miles from the shore, nor had we been into any harbor until the one above named.

ELISHA SMALL.

STATE OF MAINE, *Washington, ss.*

Then personally appeared the said Elisha Small, and made oath that the foregoing statement by him subscribed was true. Before me,

FREDERICK HOBBS, *Justice of the Peace.*

[Inclosure 3 in Memorial No. 1.]

EASTPORT, *July 27, 1824.*

I, Elias Ficket, master of the schooner *Diligent*, of Harrington, Maine, do testify, declare, and say: That on the sixteenth of July, eighteen hundred and twenty-four, I left Eastport, Maine, in the above schooner, for a fishing voyage in the Bay of Fundy; that on Sunday, the twenty-fifth of July, being nearly destitute of water, we repaired to a place called "Two Islands," lying to the southward of Grand Menan about three-fourths of a mile, and on which there are no inhabitants, and procured two barrels of water from a spring or brook on said island. On Monday morning, got under way, and, the wind being light, towed out of the harbor, and when about one and a

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half mile from the shore, while attempting to get on the fishing ground (which is six to nine miles from any shore) we were boarded by a barge from the British man-of-war brig *Dotterel*, commanded by a sailing master whose name was Jones, and having on board nine men, taken possession of, and ordered to receive on board the crew of the schooner *Ruby*, of Lubec, which vessel they had previously captured, and to sail immediately to Lubec, as a cartel; thereby interrupting us in our lawful employment and destroying our fishery. I further declare that we had no goods or merchandise on board our schooner; that we did not go into a harbor for any other purpose than to obtain a supply of water.

We were not fishing where we were captured, nor had we attempted to catch fish within more than six miles from the shore while on our voyage. I further declare that we were badly used by the barge's officers, threatening to shoot us, &c., &c. And they said their orders were to capture all Americans they met with, right or wrong; that there was no treaty, and that Americans should not fish in British waters.

ELIAS FICKET.

STATE OF MAINE, *Washington, ss.*

Then personally appeared the said Elias Ficket, and made solemn oath that the foregoing statement by him subscribed was true. Before me,

FREDERICK HOBBS, *Justice of the Peace.*

Memorial No. 2.

To the Hon. JOHN Q. ADAMS, *Secretary of State:*

The undersigned, inhabitants of the county of Washington, in the State of Maine, interested in the fisheries in the Bay of Fundy, beg leave to represent:

That although till the present year the privileges reserved and confirmed to American fishermen by the convention of 1818 have been enjoyed with but few interruptions, they are now, in a great measure, cut off and prostrated by the piratical conduct of the commander of his Britannic Majesty's brig *Dotterel* and the officers under his command, aided by the provincial cutter attached to the port of St. Andrew's.

That the officer having the charge of the armed boats ordered to cruise round Grand Menan and Campo Bello has written instructions, which have been exhibited to our citizens, from the commander of the *Dotterel*, to seize and send into St. Andrews's all American fishermen found within three marine miles of said islands. That under these orders that officer, without any pretence other than such instructions, has seized the following vessels:

Schooner *Pilgrim*, of Lubec, Woodward master; Schooner *Hero*, of Denneyville, Clark master; schooner *Rebecca*, of Addison, Wass master; schooner *Galeon*, of Lubec, Hunt master; schooner *William*, of Addison, Tabbut master; schooner *Ruby*, of Lubec, E. Small master; schooner *Reindeer*, of Lubec, R. Small master.

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The *Pilgrim* and the *Hero* were captured while under sail, standing for Lubec in distress, and more than three miles from said Grand Menan. And, although this capture took place on the sixteenth day of June last, said schooner *Hero* has not been sent in for trial, but has been armed, and is still used as a tender to said brig *Dotterel*, the more easily to decoy other fishing vessels. The *Rebecca* went into Grand Menan in distress for wood and water, and, having obtained a supply, was preparing to return to the fishing ground, when she was taken. The *Galeon*, with seventy quintals of fish on board, went in for the same purpose, and, within a few minutes after she had accomplished her object, it being quite late in the evening, and the fog extremely dense, she was taken and sent to St. Andrew's. The *William*, with one hundred and twenty quintals of fish on board, left the fishing ground in distress for want of water, and had come to anchor near the shore of Grand Menan, her sails were not handed, nor was her boat launched from the deck to go ashore, when she was seized and taken to St. Andrew's. The *Ruby* and *Reindeer* went into Two Island harbor for wood and water, near Grand Menan, and were immediately seized.

We beg leave here to observe that American fishermen have no occasion nor inducement to violate the provisions of the aforesaid convention, nor have they, as we firmly believe, in any instance, given just cause for complaint.

The protest of the master and crew of the *Galeon* has already been forwarded you. Those of the *Hero* and *Pilgrim* will accompany this memorial, and will, we trust, establish the facts relative to the wanton detention of those vessels, as well as show the indignities cast upon the American flag and the insults offered the citizens of the United States by the British officers of the *Dotterel* and provisional cutter.

To claim these vessels in the Vice Admiralty courts in New Brunswick would be worse than a total loss; for, besides the fact that the claimant must give bonds to the amount of £60, currency of New Brunswick, to pay costs of libel, whether condemnation takes place or not, his vessel, should he prevail in a claim, (proverbially hopeless,) will come to his hands in a dismantled and ruinous state. No care is taken of American vessels seized for a pretended violation of British revenue laws; for, as they can never sail under British papers, but must be broken up or taken from the country, the seizing officer has no inducement to keep them in good repair, with the expectation of being remunerated for particular attention by a more advantageous sale. Certificate of reasonable cause of seizure, to prevent a suit for damages, is never refused by the Vice Admiralty judge of New Brunswick to a British naval officer, when the proper application is made. To appeal, therefore, to the provincial courts for redress would be worse than unavailing. It would only aggravate the damages already sustained.

To the successful advocate of the rights of American fishermen, it need not be urged that this state of things is peculiarly vexatious and ruinous. To the owners and crews of the vessels detained, and to their families, it is in many instances oppressive and distressing, and they are left without redress unless their own Government interpose. To that Government they appeal, and they do it with full

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confidence that their complaints will be heard and their wrongs redressed.

AUGUST 16, 1824.

SOL. THAYER,	DARIUS PEARN,
HAYDEN & KILLEY,	BUCK & TINKHAM,
JOHN NORTON & CO.,	BENJ. B. LEAWELL,
JOHN A. BASKUM,	JAMES M. LINCOLN,
BENJ. BUCKNAM,	BUCKNAN & GUNNISON,
ETHEL OLMSTEAD,	JOHN G. FAXON,
JOHN WEBSTER,	JOSEPH SUMMER,
A. BARNARD,	DAVENPORT TUCKER,
OLIVER & JAMES GLOVER,	JEREMIAH FOWLER,
DANIEL YOUNG,	MOSES FULLER,
DANIEL PEASE,	F. A. & O. BURRALL,
WILLIAM H. TYLER,	CALVIN GIBBS,
JOSEPH WHITNEY,	DARMS & NOYES,
A. P. MILLS,	WILLIAM M. BROOKS,
JOSHUA GIBBS,	SAMUEL B. WADSWORTH,
SAMUEL MYERS,	T. PILSBURY,
J. BOYNTON,	JOHN FAXON,
GEORGE & ISAAC HOBBS,	WILLIAM WASS,
SAMUEL WHEELER,	WILLIAM NASH,
GREEN & SHAW,	JERY BEVAN,
W. EUSTIS,	LEWIS PUTNAM.

Memorial No. 3.

To the Hon. JOHN Q. ADAMS,

Secretary of State of the United States:

The memorial of John Gardiner Faxon, merchant, of Lubec, in the State of Maine, humbly showeth:

That the said John G. Faxon is sole owner of the schooner called the *Galeon*, of said Lubec. The said schooner, being on a fishing voyage in the Bay of Fundy, was seized and detained by part of the officers and crew of the British armed brig *Dotterel*, and is still detained in the British port of St. Andrew's, by the authority of the commander of said brig, under the circumstances set forth in the protest annexed, which seizure and detention is to the great damage of the said John G. Faxon; wherefore your memorialist humbly prays that the honorable Secretary will cause such proceedings relative to the said premises as he may think proper to relieve the said owner and crew of the said schooner *Galeon*. And your memorialist will ever pray, &c.

And your memorialist further states that the just value of the schooner *Galeon*, with her cargo and equipments, at the time of her capture and detention as aforesaid, was fifteen hundred dollars.

JOHN G. FAXON.

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[Inclosure 1 in Memorial No. 8.]

UNITED STATES OF AMERICA,
State of Maine, Washington, ss.

Be it known to all to whom these presents may come: That on this 22d day of July, in the year of our Lord one thousand eight hundred and twenty-four, before me, Solomon Thayer, notary public, by legal authority duly commissioned and sworn, and dwelling at Lubec, county and State aforesaid, personally appeared Harding Clark, master of the pink-sterned schooner *Hero*, of Dennysville, Ephraim Clark, and William H. N. Brown, fishermen on board said schooner, who, being severally sworn, do depose, declare, and say: That on the 11th day of June, now last past, they sailed from Dennysville in said schooner *Hero*, fitted for a fishing cruise of six weeks, and arrived on Monday morning, being the 14th of said June, on the fishing ground called the Grand Menan Banks, from nine to twelve marine miles from land, and commenced fishing; that they continued to fish till Wednesday, the 16th day of said month, when the schooner struck adrift. It was then about 9 o'clock a. m. Got under way immediately and attempted to regain the fishing ground, but could not effect it by reason of a strong tide. Kept beating to windward towards the fishing ground, and, the tide slacking, got within about half a mile of it, and from six to nine miles from any land, when an armed boat, said to belong to the British armed brig *Dotterel*, fired two muskets, loaded with balls, across said schooner *Hero*. She was rounded to, and an officer came on board and took forcible possession of the vessel and her papers.

The declarants further depose and say, that they were kept sometimes on board said schooner, sometimes on board the *Dotterel* or some of her boats, from that time till the twenty-ninth day of said June, and were allowed for a part of this time only one meal per day. That they were every night in harbor and near home; but though they earnestly solicited to be set on shore, it was not granted them, but were forced, by threats and menaces that they would be cut in pieces in case of refusal, to do the same duty as the common British sailors. They were at last landed at St. John, a distance of eighty miles from Dennysville, and even subjected to great expense and distress in getting home.

The declarants further say, that said schooner *Hero* has been manned and armed, and is still made use of as a tender for said brig *Dotterel*, and has never been libelled or sent in for trial. And the said Harding Clark for himself saith, that when he was set on shore at St. John his pocket book and private papers were taken from him and detained.

Wherefore they do protest, and I, the said notary, in their behalf, do solemnly protest, against the winds, seas, tides, armed boats, pirates, the wanton and flagrant abuse of power, and whatsoever else that caused the seizure and detention of said schooner *Hero*, and for all damages, costs, and expenses sustained, and to be sustained, by reason of such illegal and wanton detention of said schooner as aforesaid; and I, the said notary, do aver that the same was caused, not by a breach of the revenue laws of Great Britain and the United States respecting the fisheries, done, made, or committed by said

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schooner *Hero*, but was wholly without any fault on the part of said schooner, or any person thereof, but an act of piracy committed on the high seas without a pretence of authority.

In faith whereof, I, the said notary, have hereunto set my hand and affixed my seal of office the day and year first above written.

SOLOMON THAYER, *Notary Public.*
HARDING CLARK.
WILLIAM H. N. BROWN.
EPHRAIM CLARK.

[Inclosure 2 in Memorial No. 3.]

UNITED STATES OF AMERICA,
State of Maine, Washington, ss.

To all whom it may or doth concern: Know ye that on the twenty-third day of July, in the year of our Lord eighteen hundred and twenty-four, before me, Solomon Thayer, notary public, by legal authority duly appointed, commissioned, and sworn, and dwelling in Lubec, State and county aforesaid, personally appeared Charles Tabbut, master of the fishing schooner *William*, of Addison, and noted his protest; and now, on the twenty-third day of August, anno Domini eighteen hundred and twenty-four, he again appears to extend the same, and with him also appear Thomas Wright, Benjamin Reynolds, and Josiah W. Perry, fishermen belonging to said schooner *William*, who, being severally sworn, do declare and say: That, on the first day of July, now last past, they sailed in said schooner *William* on a fishing cruise in the Bay of Fundy, and anchored between what is called Mur-ground and the Grand Menan Banks, a distance from nine to fifteen miles from land; that they continued there at anchor and fishing till the fourteenth day of said July, when, having only fifteen gallons of water on board, and that unfit for use, it was thought prudent and necessary to run into Gull Cove, Grand Menan, and obtain a supply. Arrived at Gull Cove on the fifteenth of said July, at 2 p. m., and came to anchor, the fog being extremely dense. The sails of the *William* were not handed, as it was intended to obtain water with all possible despatch and return to the fishing ground. They had gone below and were taking dinner, and not more than ten minutes from the time of anchoring, the boat not having been launched from the deck to go on shore, when they were boarded by an armed launch, commanded by one Jones, an officer of the English gun brig *Dotterel*, who demanded their business, their papers, and took forcible possession of the vessel. Jones sent his men below to examine the water casks and ascertain what quantity of water there was on board the *William*. They reported there were three half casks of water below, one empty barrel, and one with the hoops off. Mr. Jones was then told by these declarants that the report of his men was incorrect, that one barrel only had any water in it, and that but fifteen gallons, completely unfit for use; that besides this there was a half barrel of molasses and a barrel with five or six gallons of beer. Mr. Jones ordered the *William* under way, took her in nearer the shore, moored her in a dangerous place and stripped her, and took the *William's* boat, carried it on shore, and gave out word that if any of the *William's* crew attempted to go on shore, or if any boat was called alongside, or if he heard any noise on board, he would shoot

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them. They were thus left till near sunset without a drop of water fit to drink; though they frequently hailed Mr. Jones as he passed and repassed, and stated to him their distress and begged for water, their prayer was wholly disregarded. About sunsetting a vessel from Campo Bello anchored alongside, and by permission of the captain thereof they obtained from the shore a two-gallon keg filled with water.

These declarants further say, that when Mr. Jones became satisfied there was no water fit for use on board the *William*, in a violent rage, he said "the American fishermen had been damned saucy to the inhabitants on Grand Menan." The master of the *William*, one of these declarants, replied that such an allegation did not apply to his vessel; that he had always used the inhabitants as he wished to be treated himself. Jones then said "it was damned well for him he had done so, for otherwise he should have confined him to the deck and cut him into ounce pieces." To this the master of the *William* replied he should not give himself any uneasiness on that account. Jones, with an oath, replied to this, "damn you, I will confine you to the deck and lash a pump brake across your mouth."

The declarants further say that, on the next day, the *William* was got under way, and taken to St. Andrew's and stripped; that she had over one hundred and twenty quintals of fish on board when she was captured. Wherefore, they do protest, and I, the said notary, in their behalf, do solemnly protest, against said Jones and the armed men under his command, against pirates and piratical seizures, and detentions of American fishermen, and whatsoever else caused the forcible detention of said schooner *William*, and for all expenses, costs, charges, and damages paid or sustained, or to be paid or sustained, by reason of said detention. And I, the said notary, do solemnly aver and declare that said detention was not by reason of any breach of the revenue laws of Great Britain, or of the province of New Brunswick, done or committed by said schooner *William*, or any one on board thereof, but an unauthorized, a wanton, a piratical act of the said Jones and his abettors.

CHARLES TABBUT.
BENJAMIN REYNOLDS.
JOSIAH W. PERRY.
THOMAS WRIGHT.

In faith whereof, I have hereunto affixed my seal of office, this twenty-third day of August, anno Domini eighteen hundred and twenty-four.

[Inclosure 8 in Memorial No. 8.]

UNITED STATES OF AMERICA, *State of Maine, Washington, ss.*

Be it known to all to whom these presents may come: That on this twenty-fourth day of July, in the year of our Lord one thousand eight hundred and twenty-four, before me, Solomon Thayer, notary public, by legal authority duly commissioned and sworn, and residing at Lubec, State and county aforesaid, personally appeared Hubbard Hunt, junior, mate of the schooner *Galeon*, of Lubec, Nehemiah Small, Daniel Jay, junior, John Hunt, and Edwin Hunt, sharesmen, belonging to said schooner, who, being severally sworn, do depose

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and say: That on the first day of July, now current, they sailed in the said schooner from Lubec on a fishing cruise to the Grand Menan Banks. On their way thither, and while doubling round the southerly end of Grand Menan, distant about six miles, with their colors at masthead, they were fired into by the St. Andrew's cutter, McMaster commander, and ordered to come under said cutter's lee. Mr. Baxter, an officer of said cutter, came on board and demanded her papers, sent his men into the hold to search her, and went himself for the same purpose into the cabin. After detaining the *Galeon* about half an hour, she was permitted to proceed. Arrived on the Banks the same day and commenced fishing; on the fifteenth day of said month, having only five gallons of water on board and no wood, run in for Grand Menan to get a supply. Arrived at Beal's Passage about half-past 7 p. m.; fog quite thick; went on shore and got two barrels of water and a boat load of wood by permission of Charles Blumorten, the owner; it was then about 9 o'clock of the same evening. Having got supper, and intending to get under way as soon as the landmarks could be discerned to return to the Banks, they were boarded by an armed boat belonging to the English brig *Dotterell*, and their papers demanded and taken. The vessel was immediately got under way by order of Mr. Jones, the commander of the armed boat, and run into Gull Cove. The next day the *Galeon* was taken to St. Andrew's stripped, and made fast in the King's dock.

The declarants further depose and say, that from the time they left Lubec, on the first day of said July, until they run in in distress for want of wood and water, on the evening of the fifteenth of said month, they had never been within three marine miles of Grand Menan, nor caught, or attempted to catch, any fish within from ten to twenty miles thereof. That after they were taken, the officer, Mr. Jones, positively promised them that he would release the *Galeon* as soon as she arrived at St. Andrew's; and it was their reliance on his promise, and the belief he could not be so wanton as to add insult to injury, but that he would redeem his word, that they have not protested before. She is still retained. Wherefore they now protest, and I, the said notary, in their behalf, do solemnly protest, against the flagrant abuse of law (and the right granted to American fishermen by treaty) by armed boats under the British flag, without a pretence of authority; against pirates, the winds, seas, and whatsoever else may have been the cause of the capture and detention of the *Galeon;* and I do aver that the capture and detention was not by reason of a violation of any revenue law of Great Britain, or an infraction of any privileges granted by the convention, done or committed by said *Galeon* or any of her crew, but was done without a pretence of right, and substantially an act of piracy.

HUBBARD HUNT, Jr.
NEHEMIAH SMALL.
DANIEL TAYLOR, Jr.
JOHN HUNT.
EDWIN HUNT.

In faith whereof, I, the said notary, have hereunto set my hand and seal of office, the day and year first above written.

SOLOMON THAYER, *Notary Public.*

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[Inclosure 4 in Memorial No. 8.]

UNITED STATES OF AMERICA, *State of Maine, Washington, ss.*

To all to whom this public instrument of protest may come: Be it known, that on the 22d day of June, now last past, before me, Solomon Thayer, notary public, by legal authority duly commissioned and sworn, and dwelling at Lubec, county and State aforesaid, personally appeared James Woodward, master of the fishing schooner *Pilgrim*, of Lubec, and noted his protest; and now, on this 7th day of August, in the year of our Lord one thousand eight hundred and twenty-four, he again appears, and with him also appear Jacob Winslow and James Woodward, jr., fishermen, who, being severally sworn, do depose, declare, and say: That on the 8th day of June aforesaid they sailed from Lubec on a fishing voyage to the Grand Menan Bank, so called, but, owing to thick weather and head wins, did not get on the fishing ground till Monday, the 14th day of said June. They then came to anchor (the wind blowing quite fresh and a high sea) twelve miles from any land. At 4 p. m. of the same day they found the vessel drifting; hauled in the cable, and found the anchor broke close to the stock. Made sail and got on to another part of the fishing ground, nine miles from land, and then continued to fish till Wednesday, the 16th day of said June; but finding their only remaining anchor too light to hold the vessel in so strong a current, weighed it and stood for Lubec to obtain a new one. The same day, at about 3 p. m., were fired upon and brought to by an armed boat belonging to the English armed brig *Dotterel*, who took their papers, and ordered Jacob Winslow and Benjamin Scott, fishermen, on board the tender, putting one seaman and one marine on board the *Pilgrim*. This was done while the *Pilgrim* was under way, and from four to six miles from land. The seamen in the *Pilgrim* were ordered to follow the tender, which then steered east and still further from land, and took forcible possession of the American schooner *Hero*, Harding Clark master, also under sail and standing for Lubec. Both vessels were then taken into Flagg's Cove, Grand Menan, and anchored. On Thursday, the 17th of said June, asked permission to be set on shore, but were denied. On the 18th got under way and stood for the Wolf islands; at 6 p. m. both vessels were ordered to heave to, and the *Pilgrim's* boat to be sent on board the tender. The officer then compelled one of these declarants, James Woodward, jr., only seventeen years of age, to row the boat alone, cross-handed, a distance of not less than four miles, to board vessels lying at the easterly part of the Wolf islands, and then to row back again to the tender. On the officer's return to the tender he ordered the *Pilgrim* to stand in for the eastern Wolf island; and these declarants were compelled to row her (it being then a dead calm) for four miles to gain said place, where she was anchored for the night. On the 19th, at 8 a. m., got under way and stood to Beaver harbor, and came to anchor; were then forced to unbend the sails of the *Pilgrim* and stow them below. On the 20th, at 8 a. m., were ordered to bend the sails and get under way, which was done; and, after beating with the wind S.SE. and a flood tide for three hours, were ordered back to Beaver harbor. On the 21st, at 6 a. m., were ordered to get under way; beat all day against a strong head wind, and at night anchored in Mason's Bay.

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At 1 o'clock the next morning, these declarants, knowing that the *Pilgrim* had violated no law, nor any treaty or convention between the United States and Great Britain, and that they were detained without the pretence of authority on the part of the officer of the armored boat, got said *Pilgrim* under way without orders, and stood for Lubec, where they arrived on the said 22d day of June, with the loss of boat, papers, a fowling-piece, a pistol, and a great quantity of powder and shot, which were plundered from them by said armed boat.

Wherefore they do protest, and I, the said notary, in their behalf, do solemnly protest against said armed boat and the officer and men on board thereof; against pirates and unlawful captures on the high seas; against winds, tides, and whatsoever else caused the detention of said schooner *Pilgrim*, and the loss of her papers, boat, &c.; and I, the said notary, do aver that it was not by reason of a violation of any revenue law of Great Britain, committed by said schooner *Pilgrim*, or any of her crew, but a wanton insult upon the American flag, on the high seas, without a shadow of excuse, by an officer of the British Navy.

JAMES WOODWARD, Sr.
JACOB WINSLOW.
JAMES WOODWARD, Jr.

In faith whereof, I have hereunto set my hand and affixed my seal of office, this seventh day of August, [L. S.] in the year of our Lord one thousand eight hundred and twenty-four.

SOLOMON THAYER, *Notary Public.*

Mr. Brent to Mr. Addington, dated September 21, 1824.

SIR: I have the honor to transmit to you copies of some additional papers which have been received at this office, upon the subject of the interruption, likewise given by the same armed British brig *Dotterel*, to vessels of the United States, employed in the prosecution of the fishery in the bay of Passamaquoddy, and elsewhere in the same neighborhood, as particularly exemplified in the cases of the two schooners, *William* and *Rebecca*, which are fully stated in the inclosures, and to pray the interposition of your good offices in behalf also of the owners of these vessels towards obtaining for them the indemnity to which they may be justly entitled.

I have the honor to be, with high consideration, sir, your obedient and humble servant.

DANIEL BRENT.

[Inclosure No. 1.]

STATE OF MAINE, *County of Washington.*

COLUMBIA, *September 6, 1824.*

SIR: Inclosed is a protest on account of the capture of the fishing schooner *William*, of Addison, in the county aforesaid, belonging to and owned by the subscribers, citizens of the United States. These

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papers are inclosed for the purpose of procuring redress for the injury and loss sustained. The said schooner *William* was forty-one tons burden and but four years old, with a new suit of sails and rigging, cables, anchors, &c., valued at $1,000 00
120 quintals fish on board, at $3 per quintal 360 00
Bounty for said schooner 162 62
Damages in consequence of said capture 500 00

2,022 62

All requisite evidence, should further be needed, will be furnished; and the subscribers pray that such measures may be adopted as shall lead to a redress for the loss and damage by them sustained.

WILLIAM WASS.
WILLIAM NASH.

Hon. JOHN Q. ADAMS,
Secretary of the Department of State.

[Inclosure No. 2.]

STATE OF MAINE, *County of Washington.*

COLUMBIA, *September 6, 1824.*

SIR: The unjustifiable seizure and confiscation of certain fishing vessels in the waters of Passamaquoddy bay, it is hoped, will deserve and receive the attention of Government. Inclosed is a protest against the capture of the schooner *Rebecca*, of Addison, in the county aforesaid, the property of Wilmot Wass, of the said Addison, a citizen of the United States.

The schooner *Rebecca*, valued at $600 00
25 quintals fish, at $3 ..... 75 00
Bounty 94 50
Damage in consequence of capture 300 00

1,069 50

In behalf of said Wass, I have to request that such measures may be adopted as will lead to redress of the loss and injury sustained by him.

STEPHEN EMERY, for
WILMOT WASS.

Hon. JOHN Q. ADAMS,
Secretary of the Department of State.

[Inclosure No. 3.]

Charles Tabbuts, master of the schooner *William*, of Addison, on oath, deposeth and saith: That he sailed on board said schooner, on a fishing cruise, on the 1st day of July, 1824; anchored between what is called the Grand Menan Banks and the Mur-ground; continued at anchor and fishing till the 14th of July, when, having on board only fifteen gallons of water, and that unfit for use, it was determined best to run into Gull Cove and obtain a barrel of water; arrived there on the 15th, about 2 p. m., and came to anchor; the fog very thick; did not hand the sails, as we intended to get the water on board and

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go back. While below and taking dinner, and not more than ten minutes from the time of anchoring, our boat still on deck, we were boarded by a Mr. Jones, an officer of the *Dotterel*, our papers demanded and taken into his possession. He demanded our reasons for being there, and was told them. He sent his men below to see how much water we had; they reported that there were three and a half barrels of water below, one empty barrel, and one with the hoops off. Mr. Jones was then told by me that there was no cask but one that had any water in it, and that had only fifteen gallons, and so bad it could not be used; that there was one half barrel of molasses, and a barrel with five or six gallons of beer. Mr. Jones ordered the *William* under way, took her in towards the shore, moored her in a dangerous place, and stripped her; took the boat and carried her on shore, and gave orders that if any of the *William's* crew went on shore, or any boat was called alongside, or if he heard any noise on board, he would shoot us. We were thus left without a drop of water fit to drink till sunset; though we frequently hailed Mr. Jones, and stated our distress, as he passed us, we were wholly disregarded. About sunset a vessel from Campo Bello anchored alongside, and, by permission of the master, the deponent went on shore and got a two-gallon keg of water. On the 16th instant the *William* was got under way by Mr. Jones and taken to St. Andrew's.

The deponent further saith, that when Mr. Jones found there was no water on board fit for use, in a violent rage he told this deponent that the American fishermen had been damned saucy to the inhabitants. The deponent replied that he had not been saucy to the inhabitants, but had always used them as he wished to be used himself. Jones replied that it was damned well for me that I had been so, or he would otherwise confine me to the deck and cut me into ounce pieces. I told him that I should not give myself any uneasiness on that account. Then, with an oath, be said, damn you, I will confine you to the deck and lash a pump-brake across your mouth.

CHARLES TABBUTS.

STATE OF MAINE, *Washington, ss.*

On this 23d day of July, 1824, personally appeared before me Charles Tabbuts, and made solemn oath to the truth of the foregoing statement by him subscribed.

SOLOMON THAYER,
Justice of the Peace and Notary Public.

Mr. Addington to Mr. Adams.

WASHINGTON, *October 5, 1824.*

SIR: I have the honor to acknowledge the receipt of two letters, one dated the 8th and the other the 21st ultimo, which Mr. Brent addressed to me, in pursuance of instructions from you, relative to certain American fishing vessels averred to have been detained, in violation of the terms of the convention of 1818, by his Majesty's sloop *Dotterel*, in the Bay of Fundy, in the months of June and July last.

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I shall not fail to communicate, without loss of time, the whole of the papers relative to this matter to the Admiral commanding his Majesty's naval forces at Halifax; and in so doing shall strongly recommend that a full and impartial investigation be made into the merits of the various cases therein reported, the result of which shall be forthwith imparted to you whenever it comes to my knowledge.

Meantime, sir, I must inform you that a report of those very occurrences, of a nature very different from that made by the individuals to you, has reached me from Rear-Admiral Lake, of whose letter, together with its inclosures, I have the honor to transmit to you copies herewith.

It is therein made to appear that the fishing vessels above mentioned were detained by the *Dotterel* solely on account of their having been detected in the commission of a direct infraction of the treaties existing between the two nations, having, in fact, been found pursuing their occupation without the boundaries assigned to them by the terms of the convention of 1818.

On this point, however, the parties are at issue, each stating his case according to his own view of it. Thus far, therefore, there is ground for a candid and impartial investigation on both sides. Such I have recommended to Admiral Lake, and such, I trust, you will also cause to be instituted here.

But there is another point, sir, on which I lament that there should be no ground for doubt or hesitation as to the course which I have to pursue.

By a perusal of the inclosed documents you will perceive that, after the detention of the *Reindeer* and *Ruby* by the master of the *Dotterel*, and while on their way to St. Andrew's, "an attack was made on those vessels by two schooners and an open boat, *under American colors, full of armed men, with muskets and fixed bayonets*, amounting to about one hundred, headed by a Mr. Howard, of Eastport, who is said to be a captain in the United States militia, in consequence of which the master thought it most prudent to surrender to such superior force."

This, sir, is an outrage of such a nature as to leave me no other alternative than to make a formal demand from the American Government for the infliction of punishment on the offenders.

Whether the vessels were legally detained or not, such an act of violence will bear no justification. If individuals are permitted to expound the stipulations of treaties for themselves, with arms in their hands, the preservation of harmony and good understanding between nations can no longer be hoped for.

I am disposed (no person can be more so) to act fairly and openly by the citizens of this Republic, wherever they have just ground of complaint against British authorities, and shall accordingly take every measure for ascertaining whether the detention of the vessels in question was legal or not.

If it was not legal, you have abundant proof, sir, in your own hands of the disposition of his Majesty's Government to afford the most prompt and equitable redress to the parties aggrieved. I allude to the case of the American schooner *Charles*, detained and employed as a tender last year by his Majesty's sloop *Argus*. That act, you will recollect, was condemned as illegal by his Majesty's ministers,

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and restitution ordered to be made to the parties who suffered through the exercise of it, although otherwise liable, by the illegality of their conduct, to the entire loss of their property.

But in the meantime, sir, it becomes my duty to demand reparation, by the punishment of the transgressors, for the act of violence perpetrated on persons bearing his Majesty's commissions, while engaged in the discharge of their public duties.

I feel confident, sir, that you will view this outrage in the same light as myself, and consider such conduct equally dangerous to the peace and well being of the two countries; and I have no doubt that you will see the expediency of causing immediate proceedings to be instituted against the principal actors in this disgraceful scene.

I beg, sir, that you will accept the renewed assurances of my distinguished consideration.

H. U. ADDINGTON.

[Inclosure No. 1.]

Rear-Admiral Lake to Mr. Addington.

HALIFAX, *September 9, 1824.*

SIR: I have the honor to transmit to you a copy of a letter, dated 26th ultimo, from Captain Hoare, of his Majesty's sloop *Dotterel*, with its inclosure from Mr. John Jones, master of that sloop; also copies of two letters from Captain Hoare, dated the 2d instant, one of them containing a copy of the affidavit therein mentioned.

By the first of these communications you will perceive that two American vessels, called the *Reindeer* and *Ruby*, were seized by the master of the *Dotterel* in Two Island harbor, Grand Menan, on the 26th of July, for a breach of the treaty between Great Britain and the United States; and that on the evening of the same day, when abreast of Harbor de Lute, proceeding to St. Andrew's, an attack was made on the vessels in question by two schooners and an open boat, under American colors, full of armed men, with muskets and fixed bayonets, amounting to about one hundred, having the appearance of militia men, and headed by a Mr. Howard, of Eastport, who is said to be a captain in the United States militia; in consequence of which, the master thought it most prudent to surrender to such superior force.

Captain Hoare's next letter mentions his having, on the 29th ultimo, on his passage to Halifax, fallen in with the American schooner *Madison*, (by her papers, Ansel Coggins master,) which he was informed was one of the vessels to which the men belonged who rescued the before mentioned vessels from his master; and that, finding on board this vessel a man, named Daniel Rumney, whom one of the marines of the *Dotterel* identified as one of the persons concerned in the rescue, Captain Hoare thought proper to detain the vessel, and take Rumney on board the *Dotterel* as a prisoner.

Captain Hoare's other letter refers to the *Pilgrim*, an American fishing vessel, seized by him at Grand Menan, in June last, for a breach of the treaty; which vessel was afterwards rescued by some of her crew, in conjunction with one of the men whom Captain Hoare had put in charge of her; and the said vessel having been fallen in with on the 29th ultimo, and a man named Winslow, who, Captain

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Hoare was informed, was one of those actively engaged in the forcible rescue of the said vessel, she was taken possession of, and the man (Winslow) put on board the *Dotterel* as a prisoner.

As in these transactions his Majesty's officers have been assaulted in the execution of their duty by armed subjects of the United States, and the property of which they had, in his Majesty's name, taken lawful possession, rescued from them, in violation of the treaty subsisting between Great Britain and the United States, I consider it necessary that the subject should be brought officially before the American Government, in order that steps may be taken to prevent the continuance of such proceedings, and therefore request you will be pleased to adopt such measures on the occasion as shall appear to you to be necessary.

I have the honor to be, &c.,

W. T. LAKE, *Rear-Admiral and Commander-in-chief.*

[Inclosure No. 2.]

Captain Hoare to Admiral Lake.

HIS MAJESTY'S SLOOP DOTTEREL,
Halifax, September 2, 1824.

SIR: I have the honor to inform you that, while running past the Outer Bank of the Grand Menan, on the 29th ultimo, on my way to this port, I fell in with the *Pilgrim*, American fishing schooner, and as this vessel had been taken by one of my boats on the 16th of June, at Grand Menan, for infringing the treaty, but was retaken by the crew, aided by James Martin, one of the two men put in charge of her, I have taken possession of, and ordered her to this port.

Inclosed, sir, is the copy of an affidavit, made by William Paine (marine) and the other man in charge of the *Pilgrim*, on their arrival at Lubec, by which affidavit you will see, sir, that a man by the name of Winslow, one of the crew of the *Pilgrim*, was the most active person in retaking her, and that he forced the cutlass from William Paine and obliged him to go below. Under these circumstances, I felt I should be justified in considering him a prisoner, and, as such, he now remains on board the *Dotterel*. That he ought to be punished in some way that may deter others of his nation from committing the same offence under similar circumstances, I am sure, sir, you will think necessary.

I have, therefore, to request you will be pleased to solicit the advice of the Attorney General on this important point, that I may be governed thereby in my proceedings.

I have the honor to be, &c., &c.,

RICHARD HOARE, *Commander.*

Admiral LAKE.

[Sub-inclosure.]

William Paine, one of the marines belonging to his Britannic Majesty's brig the *Dotterel*, maketh oath and saith: That, on Wednesday last, the American fishing boat *Pilgrim* was seized for a violation of the treaty between the United States and Great Britain, and the de-

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ponent, with James Martin, seaman, put on board to take charge of her; that on the night of the 21st instant, between the hours of 11 and 12, it being Martin's watch, he, this deponent, was awoke from sleep by the roll of the vessel; that he attempted to go on deck, but found the companion doors shut; this deponent then broke open the companion doors, armed himself, and went on deck, and ordered Captain Woodward, the master of the boat, then at the helm, to put the boat about; he refused; Martin was rowing; this deponent went forward and ordered him to drop the oar; but he would not, till this deponent threatened to cut his head off if he did not; while this deponent was thus endeavoring to get the vessel about, Winslow and Martin suddenly sprung upon him, and obliged him to go below. This deponent was then brought to this place in the said boat *Pilgrim* against his will, and against all the exertions in his power to make.

his
WILLIAM × PAINE.
mark.

Benjamin Scott, one of the hands on board the *Pilgrim*, on oath, saith: That the foregoing statement of Mr. William Paine is, according to his best knowledge and belief, substantially true; that he was below when Mr. Paine armed himself and went on deck, and soon after he returned, and said he had been overpowered and his arms taken from him; that the *Pilgrim* was taken by Woodward and Winslow, aided by Martin, to Lubec. This deponent further saith that Woodward and Winslow both acknowledged that Mr. Paine discharged his duty to the utmost of his power; that superior force alone caused him to surrender his arms.

BENJAMIN SCOTT.

STATE OF MAINE, *Washington, ss.*

To all to whom these presents may come: Know ye, that on this twenty-second day of June, anno Domini 1824, before me, Solomon Thayer, notary public, by legal authority duly commissioned and sworn, and residing at Lubec, personally appeared the aforenamed William Paine and Benjamin Scott, and made solemn oath that the declarations by them personally made and signed were just and true.

In testimonium veritatis,

SOLOMON THAYER, *Notary Public.*

NEW BRUNSWICK, *Charlotte County, ss.*

HALIFAX, *September 2, 1824.*

I, the undersigned, one of his Majesty's justices of the peace in and for the said county, residing in Campo Bello, do hereby certify that on the twenty-third day of June, 1824, William Paine, the person in the annexed instrument mentioned, appeared before me, and declared the facts therein contained, which appear to me to be correct. That Solomon Thayer is a notary public for the county of Washington, in the Province of Maine, United States, duly appointed, and that full faith and credit may be given to his attestation.

D. OWEN, *J. P.*

RICHARD HOARE, *Commander of his Majesty's sloop Dotterel.*

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Mr. Brent to Mr. Shepley, Attorney of United States for the District of Maine.

DEPARTMENT OF STATE, *Washington, October 8, 1824.*

SIR: In the absence of the Secretary, I have the honor to transmit to you the inclosed copy of a letter from Mr. Addington, the British chargé d'affaires at this place, in answer to remonstrances from this Department, upon the complaints which were lately exhibited to it by sundry citizens of the United States, residing in the State of Maine, and engaged in the fisheries, against the commander of the British armed brig *Dotterel*, for interruptions and other injuries which they state to have experienced at an instance and under the orders of that officer, in the prosecution of their accustomed employment during the present season, and requesting his good offices towards obtaining for them the redress to which they may be entitled; and I beg leave, at the same time, to trouble you with copies of the letters and documents referred to, and inclosed in Mr. Addington's letter, which exhibit serious complaints on the part of the British authorities against all or very many of the same individuals, in reference to the subject-matter of their own complaints. I do this with the request that, as soon as convenient, you would have the goodness to institute an inquiry into the circumstances particularly complained of by the British chargé d'affaires, and communicate the result to this Department, that the Secretary may be enabled, with the advantage of the counter statement to be thus expected, as I doubt not he will, to give Mr. Addington satisfactory explanations in relation to the transactions complained of by him; or otherwise to direct such proceedings to be had as the circumstances of the whole case shall render advisable and proper.

I am, with great respect, sir, your obedient and humble servant,

DANIEL BRENT.

Mr. Shepley to Mr. Adams.

SACO, *November 16, 1824.*

SIR: Having been requested by letter from Mr. Brent, under date of the seventh (sic) of October last, to institute an inquiry into the circumstances particularly complained of by the British chargé d'affaires, and to communicate the result to the Department, I have now the honor to inform you that I repaired to and near to the places of residence of the parties to those transactions, called upon them and took their statements under oath, which are herewith inclosed, and by which you will be enabled to understand fully and correctly the whole history, not only of the circumstances complained of, but of all the proceedings of the captain of the British armed brig *Dotterel* in relation to our fishermen, and their proceedings to protect themselves, as they supposed, from the losses occasioned by the conduct of the captain of the *Dotterel*.

It may, I think, sir, with safety be affirmed that the inclosed documents (being the affidavits of twenty-seven individuals, and relating to thirteen schooners and boats and one small boat,) present a fair

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and faithful history of all the proceedings this season between our fishermen and the officers of that vessel.

I have been particularly cautious, in taking the testimony, to give it without coloring it by the feelings of excitement manifested by our citizens.

Inclosed, also, is a bill of services and expenses for attending to the business.

With the highest respect, I am, sir, your most obedient servant,

ETHER SHEPLEY, *District Attorney.*

[Inclosure No. 1.]

I, Robert Small, master of the schooner *Reindeer*, of Lubec, on oath, testify and say: That it is my practice, in fitting out for the fisheries, to fill the barrels which I use for oil barrels with water, and, as I use the water and empty the barrels, to fill them with oil. I purchased the barrels while fitting out this cruise, and did not see them till after filled; there were eight filled with water. We left the harbor the twenty-sixth day of July, and proceeded on the fishing ground near Grand Menan Bank; continued to fish two or three days, and then discovered that the water in six of my barrels was salt, so that I could not use it, the barrels having been used for salting beef and pork. Finding my water all bad and expended, ran in to Two Island harbor for water, and went on shore and obtained my water; laid there till the next morning, becalmned; then made sail for the Banks; got out about a mile and a half or two miles, and the wind died away and left me becalmed again; soon discovered the barge of the British armed brig *Dotterel*, the *Ruby*, the *Friend*, and boat *Diligence*, lying in the same harbor, and near me; the barge came up and fired; ordered the anchor to be dropped, which was done; the master of the barge then ordered us to part—the *Ruby* and *Reindeer* being connected by a small line—which was obeyed; the vessels parted; he then ordered the *Ruby* to drop her anchor, which was done; he then came on board our vessel, the *Reindeer*, in a great rage; he demanded the papers, which were given him; they then threatened to carve us up like a turkey or a piece of beef, brandishing their cutlasses about our heads; took the crew all out and put them on board the schooner *Friend;* then took out the crew of the *Ruby* and put them on board of the schooner *Diligence*, and ordered the *Friend* and *Diligence* off; told them to go off and about their business; then got the *Reindeer* under way, bound for St. Andrew's, and ordered the *Ruby* to follow; passing up a little past Harbor de Lute, two other vessels hove down upon us; one, the schooner *Madison*, came down upon the *Reindeer*, there being about twenty men on her deck with muskets, but no bayonets upon them; Jones, the master of the barge, being on board of the *Reindeer*, ordered all hands and directed them to fire into the *Madison;* I then said to him, if you fire into that vessel, every man of you will be shot; he said, I believe it; he then said, what do they want, and who are they? I said to him, they are my neighbors; they want this vessel, and they will have her; he then laid down his sword and said, I surrender; unlocked his trunk, took out the papers of my vessel and the *Ruby* and gave them to me; Skipper Coggins then invited him on board the *Madison;* and upon my assuring him that he might go with

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perfect safety, he went on board, drank with us, shook hands, and parted with us; went on board his barge, and went off; the *Reindeer* and *Ruby* then went home; the vessel has been laid up since, as I did not dare to let her go out; and the crew has been upon charges also; the injury to the owner and crew has been fifteen hundred dollars. I was in no other British harbor, except at Buck's Rock, in Grand Menan, where I went in the night in a heavy blow, and went out again before morning. I saw no person; was not on shore; never fired any musket on the island, nor did I ever state that I was armed or intended to resist; had only one old musket on board; fishermen always carry one or two; the crews of the vessels *Reindeer*, *Ruby*, and *Diligence*, were not on board the middle one or any one of the vessels, nor was there any show of fire-arms or fish spears on board of either of the vessels; they were not lashed together for resistance. This is not only a common practice, but is necessary in this bay, where the tide is very strong and runs in different directions. There was not a gun fired into the *Reindeer* or at her while in Jones' possession, nor was there a gun fired at all till after Mr. Jones had gone on board the *Madison*, and then only as an expression of joy; nor was there any gun fired at the *Ruby;* nor did the *Diligence* or any person on board of her demand or take any arms from those on board the *Ruby* when she was retaken; they did ask for one of their own muskets which the barge had taken from them, and it was brought to them; this was after the *Ruby* had been surrendered. I have not fished any within five to six miles of the land this year. There is no fishing ground nearer the shore, nor any object in going near shore, except for wood and water.

ETHER SHEPLEY.

Sworn to before—

ROBERT SMALL.

NOVEMBER 5, 1824.

[Inclosure No. 2.]

Paul Johnson, jr., master of the schooner *Sally*, of Eastport, on oath, declares: That he sailed the 13th day of May last, fitted out for the fishery on the Labrador coast, and proceeded on the voyage; on the 4th of June, the wind being east and weather coming on thick, thought it prudent to make a harbor, and ran into Shelburne, on the southside of Nova Scotia, and anchored, and was boarded by a boat from the British armed brig *Dotterel;* was asked what business I had there? I told him I was bound to Labrador, and thought I had a right to make a harbor. The *Sally* was then ordered under way and carried alongside the brig, and an officer came on board and searched us; was told I had broken the treaty, and should be detained. The next morning my whole crew were taken out and put on board the *Dotterel*, and my vessel was manned from the *Dotterel* and sent on a cruise to Cape Negro harbor, about nine miles; there several small vessels were boarded from us; continued there two days, then got under way and proceeded back to Shelburne, and anchored alongside the *Dotterel.* The captain then sent for me to come on board the brig; went on board; was asked if I was master of the *Sally;* answered that I was. He said he did not know but my vessel would be condemned if he carried her in, but he should let me go; was told I must pay for my

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men's rations while they were on board the *Dotterel*, and I sent on board the *Dotterel* fifteen pounds of pork and eighteen pounds of bread, and then took my men on board again and proceeded on my voyage.

PAUL JOHNSON, Jr.

Sworn to before—

ETHER SHEPLEY.

NOVEMBER 5, 1824.

[Inclosure No. 3.]

I, Hebberd Hunt, skipper of the schooner *Galeon*, of Lubec, Daniel Joy, jr., Nehemiah Small, and John Hunt, hands on board, on oath, testify and say: That we sailed in said schooner from Lubec on the 1st day of July last, fitted out for the fisheries, and proceeded for the fishing ground near Grand Menan Bank; being on the passage, and six miles distant from the southwest head of the island of Great Menan, the provincial revenue cutter, Mr. McMasters master, came down upon us and fired upon us; ordered us under his lee. We hove to under his lee; he sent his boat aboard; demanded the papers, which were delivered; searched the vessel, and then dismissed us, saying we might proceed on to the Banks. We then proceeded to the Bank, and continued to fish fifteen days on and near the Bank, from fifteen to eighteen miles distant from the land; then, being in want of water, having lost part of our water by injury accidentally happening to one of the casks, and being also in want of wood, found it necessary to make a port to obtain wood and water; ran for the island of Grand Menan, and made it a little to the north of Woodward's Cove; obtained our water, and then proceeded to the mouth of Beale's Passage, to obtain wood, being unable to obtain it where we did our water, and there obtained a boat load of drift wood; towards night, being below, eating our only meal for the day, having neither wood nor water to cook before, were boarded from the barge of the British armed brig *Dotterel;* was asked where the vessel belonged; our papers were demanded and delivered, and the vessel was immediately ordered under way. The skipper stated to the master of the barge that he came only for wood and water; that he had not fished any near the land, and thought he had done nothing which he was not authorized to do by the treaty. The master of the barge said, what is the use of talking about the treaty—damn the treaty; I did not come here to learn my lesson—I learned it before I came. One of the hands, named Joy, was threatened to have his mouth gagged with the pump bolt for conversing with some of the crew of the barge, and was sent on shore on White Head island; the vessel and remainder of the crew were carried to St. Andrew's; the vessel was afterwards sold at St. Andrew's; the crew were turned out of the vessel and everything detained but our wearing apparel. The loss to the owners and crew has been as much as one thousand dollars. We have been on board of the schooner during all the time she was employed this season until taken, and do positively aver that we have not fished at any time within more than six miles of the land, and have not, at any other time, been within any British harbor.

We also testify that, about the middle of June last, being on the gravelly ground about nine miles southeast of the island of Grand

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Menan, Jacob Winslow came on board of us from the schooner *Pilgrim* to borrow an anchor, stating that they had lost their anchor; having broken one anchor, could not lend him one. The next day the *Pilgrim*, being at anchor about half a mile outside of us, and more than nine miles from the land, soon got under way to go home and obtain an anchor; and, having passed us nearly a mile toward the land, a tender to the *Dotterel* came down upon her, and fired upon her, and took possession of her, she then being eight miles to the southeast of Grand Menan. The same day, about an hour after, the tender took possession of the schooner *Hero*, of Dennisville, Clark master, she being at the time about a mile outside of us, and ten miles southeast of the island of Grand Menan.

HERBERD HUNT.
NEHEMIAH SMALL.
DANIEL JOY, Jr.
JOHN HUNT.

Sworn to before—

ETHER SHEPLEY.

NOVEMBER 5, 1824.

[Inclosure No. 4.]

John G. Faxon, of Lubec, on oath, declares: That he was the owner of the *Galeon* when she was captured by a barge of the brig *Dotterel*. On or about the seventeenth day of July last, the *Galeon* having been captured and lying in Snug Cove, in Campo Bello, I went on board of her to learn the reasons of her capture. The master, Jones, informed me that he had no other reason for the capture than finding her in a British harbor in Grand Menan. I then asked him if he was not aware that we had a right to go in for wood and water; he said he knew we had that right, but his orders were such that he was obliged to take all, whether in for that purpose or not. I asked if he had known or suspected my vessel had fished near the land. He said he never had. I then asked him if he had not reason to believe they were in want of wood and water when they went in. He said he had, for the wood and water was on deck, not stowed away, when he took them. I then asked him how long he supposed they had been lying at anchor. He said the men told him three-quarters of an hour, and he had no reason to believe otherwise. I then said, by your own statement you ought not to have taken her. He said he should not have taken the *Galeon* if he had not before taken the *William*, and should have let her go if he could have done it without excusing the *William*. He then said, as I have them thus far I must carry them to St. Andrew's, but I give you my word your vessel will not be detained two hours. I then rehearsed that part of the treaty to him authorizing our vessels to go in for wood and water. He said they were authorized to take all vessels within three miles of the land. I afterwards heard the orders given by the captain to Jones read; they directed him very nearly, and I believe exactly, as follows: " You will consider your cruising ground to be the Menan islands, Campo Bello, and the island of Lubec. You will take all American fishermen found within three miles of the land, except in extreme cases of distress, and carry them to St. An-

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drew's, there take an inventory of the articles on board and deliver the same to the custom-house."

JOHN G. FAXON.

Sworn to before—

ETHER SHEPLEY.

NOVEMBER 6, 1824.

I further state that I sent an attorney to St. Andrew's to ascertain the expediency of defending the vessel; that I learned through him that I must first give a bond of seventy pounds to pay costs. That the costs must be paid by me whether the defence was successful or not, and that there was little prospect of obtaining a decree of restoration without having an appeal entered; and that the expense attending the trial would probably exceed the value of the property, and therefore declined making any defence.

JOHN G. FAXON.

Sworn to before me,

ETHER SHEPLEY.

NOVEMBER 6, 1824.

[Inclosure No. 5.]

I, Jones Wass, of Addison, in the State of Maine, testify and say: That I was master of the schooner *Rebecca*, of Addison, of the burden of about twenty-seven tons; that I sailed from Addison on the first day of July, 1824, in the said schooner, fitted out for the fisheries; that I proceeded in said schooner and made the "Mur-ground," about fifteen miles southeast of the island of Grand Menan, the same day, and anchored the next morning; caught a few quintals of fish; it came on to blow fresh, and I went in and anchored about half a mile from land, under the island of Grand Menan; went on shore in a boat with a barrel and obtained a barrel of water, for which I went to the island; and having put the water on board, got under way, and, standing off to the fishing ground, perceived the barge of the British gun brig *Dotterel* giving chase, and continued to proceed on the same course, the barge pursuing till evening, it being about 3 o'clock p. m. when we left the island, the barge firing a number of times; at dark we lost sight of the barge, being then near the Nova Scotia shore; then returned partly back to the fishing ground and hove to under the foresail, and the next morning came in and anchored at Gull Cove, in the island of Grand Menan, where were six other American vessels; got under way again an hour after sunrise and stood out to sea; the wind blew so fresh that we could not anchor on the fishing ground that day, and we returned and anchored again at Gull Cove. The next morning, being the fourth of July, got under way and proceeded to the fishing ground first mentioned, and on Monday, the fifth, continued on the Mur-ground, fishing; on Tuesday, the sixth of July, in the morning, the wind blowing fresh, we hove up and laid to under her foresail, and about 8 o'clock a. m., weather being thick, and nearly out of wood, went into or near Gull Cove. About 10 o'clock the barge came alongside, all hands being employed in dressing fish, and ordered us under way, and said he was going to carry us into St. John's; demanded my papers, which were given up. I declined navigating my vessel by order from the barge, and the master of the barge

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directed his own crew to get her under way, which was done. We were carried to St. John's in the *Rebecca*, and put ashore, and we made the best of our way home, leaving the vessel. She now lies at the wharf in St. John's. No libel or proceedings have ever been instituted against the *Rebecca* that I can learn; and have learned from the Collector of the port of St. Andrew's that a few days since she had not been libelled. The *Rebecca* was owned wholly in Addison by Wilmot Wass, Lemuel Wass, and myself. The place in Grand Menan called Gull Cove had been formerly pointed out by the British authorities, on the island as well as on the water, as the place where we should be permitted to anchor and throw the "gurry" overboard. The loss to the owners must be at least seven hundred dollars.

JONES WASS.

Sworn to before me,

ETHER SHEPLEY.

NOVEMBER 1, 1824.

I, John Wright, on oath, declare: That I was mate on board of the *Rebecca*, and that all the facts above stated in the affidavit of Jones Wass, which has been read to me, are true.

JOHN WRIGHT.

Sworn to before me,

ETHER SHEPLEY.

NOVEMBER 1, 1824.

[Inclosure No. 6.]

I, Charles Tabbut, on oath, declare: That I was master of the schooner *William*, of Addison; that I sailed on or about the 27th day of June, 1824, fitted out for the fisheries, and proceeded to the fishing ground, on and near Grand Menan Bank, and continued to fish, from fifteen to eighteen miles distant from Grand Menan, until the thirteenth day of July, and on the fourteenth, having lost some of our water, found ourselves in want of water, having only half a barrel on board, and that too bad for use; then ran into Grand Menan for water, that being the only place, as the weather then was, where we could obtain it, and on the fifteenth anchored at Gull Cove, in Grand Menan; had been at anchor about ten minutes, when we were boarded from the barge of the British armed brig *Dotterel;* the papers were demanded and delivered, and the men from the barge were ordered below to search for arms, (found two muskets;) took the arms and knives. I asked the master of the barge what he was going to do with us? He answered that we had been damned saucy to the inhabitants. To which I replied that I had never been ill used by the inhabitants, nor ill used them; I had never before been in to the land, and could not have used them ill. The master of the barge then threatened to cut me into ounce pieces, to lash me to the deck, and to gag me with the pump bolt or pump brake. The vessel was then got under way, carried near the shore and moored and stripped, the boat taken away, and we were left on board the vessel thus stripped, and deprived of the boat, and without water, and lying in a dangerous place. The master of the barge said if we called a boat, or landed, or made any noise, he would shoot us. He passed us several times, and I called to him and asked for water; he answered that he would come to our assistance,

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but did not. Despairing of obtaining any from the barge, I called to the master of an English vessel, who aided me with a boat to go on shore and obtain a little water; I went, and obtained a few gallons. The next morning the master of the barge came on board again, and carried the vessel to St. Andrew's, and reported to the Collector there that we were found in Grand Menan, in want of neither wood nor water. After endeavoring to obtain a release of the vessel, without success, was ordered to leave the vessel, and did leave her. I asked the master of the barge how he could detain my vessel contrary to the treaty? He damned the treaty, and them that made it. The vessel was owned by William Wass and William Nash. She was libelled, deemed forfeit, and sold, no person appearing to claim her; and the reason that no person claimed her was, that the costs and expenses attending it would be as much as the vessel was worth. The loss to the owners and crew must be near two thousand dollars.

CHARLES TABBUT.

Sworn to before—

ETHER SHEPLEY.

NOVEMBER 2, 1824.

I, Josiah W. Perry, on oath, declare: That I was a hand on board the schooner *William;* that the facts as stated by Charles Tabbut are wholly true, the same having been read to me.

JOSIAH W. PERRY.

Sworn to before—

ETHER SHEPLEY.

NOVEMBER 2, 1824.

[Inclosure No. 7.]

I, Christopher Wass, on oath, declare: That I was managing master of the schooner *Sea Flower*, of Addison, my son being master, and sick on shore, and the vessel having, during the previous part of the season, been employed in the fisheries, and sailed on the twentieth of September, on the Grand Menan Bank, and continued there fishing on Tuesday and Wednesday; and about 8 o'clock p. m., Wednesday, blowing fresh from the west, hove up the anchor and laid to under the foresail. The wind during the night drew into the northwest and blew very heavy and split her foresail; reefed the sail above the rent and set it again, and laid till daylight; then stood to the northward and eastward, and made the southwest head of Grand Menan, bearing north by east; made the Mur Rocks and obliged to go between them, and fetched in to Kent's island, near Grand Menan, being Thursday morning. Friday and Saturday, blowing fresh and storming, could not mend our sail. Sunday, continuing to blow fresh, laid still. Monday went out on to the outer part of the rips, five or six miles from the land; caught a few fish, and, continuing to blow so that we could not anchor, came in and anchored again at Kent's island. Tuesday went out to the rips again, still blowing fresh and raining, and heavy sea from the eastward; could not anchor; caught only a few fish, and in running in carried away our fore-shrouds; hauled down the foresail and ran into the same harbor again. Wednesday morning was boarded from a tender to the British armed brig *Dotterel;* papers were demanded and delivered; asked what

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business we had there, and was answered that we were riding out the gale with both anchors ahead. The master of the tender, after much entreaty, consented to give up to us most of the fish and salt, and next morning set all hands on shore at Kent's island, and carried the vessel to St. Andrew's, where she now lies. No proceedings have been instituted against her that I can learn. She was owned wholly by me, and my loss will be as much as seven hundred dollars. I have never heard of any complaints against the vessel, other than that she was found in the harbor, and was accused of going in too frequently during the last few days.

CHRISTOPHER WASS.

Sworn to before—

ETHER SHEPLEY.

NOVEMBER 1, 1824.

I, Jones Wass, mate of the *Sea Flower* at the time above mentioned, and have heard the affidavit signed by Christopher Wass read, and, on oath, declare the facts therein stated are wholly true.

JONES WASS.

Sworn to before—

ETHER SHEPLEY.

NOVEMBER 1, 1824.

[Inclosure No. 8.]

I, Joel McKinsey, on oath, declare: That I was a hand on board the boat *Rover*, of Addison, fitted out for the fisheries; that we sailed the first part of the month of October, 1824, and proceeded as far as Little river, where we lay about nine days wind bound, and caught some herring; went out on Friday morning for the Seal islands, but, finding the wind unfavorable, concluded to proceed to the southwest head of Grand Menan, and laid to six or seven miles from the island, to the westward, fishing; while lying in this situation a tender to the British armed brig *Dotterel* passed between us and Grand Menan, eastward, and went round the point of the island out of sight; we continued fishing, and drifted nearer to the island, and the tender, about the middle of the day, returned and fired a gun towards us, we being then to the westward of the island, and distant from it four or five miles; the tender came up and spoke to the skipper of the boat, and asked him what business he had there; he answered that he had a right to fish there, for he was in our own waters; our papers were taken, and we were ordered to follow the tender, and followed her into Seal Cove, in the western end of Grand Menan, where we were sent on shore, and the boat started for St. Andrew's. The boat was owned by William Nash. The loss to the owner will be about two hundred and fifty dollars.

JOEL MCKINSEY.

Sworn to before—

ETHER SHEPLEY.

NOVEMBER 3, 1824.

[Inclosure No. 9.]

I, Otis Bryant, of Jonesborough, on oath, declare: That I was skipper of the boat *Escape*, of Jonesborough, belonging to Jeremiah

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Smith, and sailed the forepart of October, fitted for the fisheries; proceeded to Little river, and, wind being ahead and blowing heavy, could not proceed on to the fishing grounds, and remained in Little river eight days, and then proceeded toward the island of Grand Menan; being from three to four miles distant from the southwest point of the island, the tender of the British armed brig *Dotterel* came down upon us and fired at us, and put a man on board and directed us to follow; took the papers and carried us into Seal Cove, in Grand Menan. The next morning we were directed to leave the boat and go ashore, and did so; the boat started for St. Andrew's. The loss to the owner and crew must be two hundred and fifty dollars.

OTIS BRYANT.

Sworn to before—

ETHER SHEPLEY.

NOVEMBER 2, 1824.

Moses Smith, on oath, declares: That he has attended to and heard read the statement signed by Otis Bryant, and, being a hand on board the boat, knows the facts therein stated are true.

MOSES SMITH.

Sworn to before—

ETHER SHEPLEY.

NOVEMBER 3, 1824.

[Inclosure No. 10.]

I, Jacob Winslow, of Dennysville, being a hand on board of the schooner *Pilgrim*, of Dennysville, James Woodward master, sailed from Lubec about the 11th day of June last, and proceeded on to the outer grounds of the island of Grand Menan, and began to fish the 14th, being then from 10 to 12 miles distant from the island, wind blowing fresh and tide strong; broke an anchor and struck adrift; got under way and dressed our fish. The next day went on board of the *Galeon*, Hunt, to borrow an anchor, and could not obtain one; next morning anchored on the ground called the Gravelly Bottom, near the schooners *Galeon* and *Hero*, and distant from 8 to 10 miles from the island; caught from 10 to 12 quintals of fish, and then struck adrift; then finding ourselves unable to work to advantage with one anchor, and that a light one, concluded to go home to get one; about half an hour after a vessel from the southeast came down upon us, and fired several times; came on board, and proved to be a tender to the British armed brig *Dotterel;* demanded and took our papers, and took out two of the hands, myself and Benjamin Scott, and put us on board the tender; asked us what we were doing there, and answered that we had been fishing; master of the tender said we had no business to fish there in British waters, and would make us smart for it this year; he asked me what land it was in sight? said he had never seen it before; was told it was the island of Grand Menan; asked if there was any harbor into which I could pilot him, and being informed there was, asked me to pilot him in, which I did; before he was carried in, the master of the tender asked what vessel was ahead of us: told him I did not know; he said he would know, and bore down upon her, directing the *Pilgrim* to follow; he ordered a marine to fire upon the

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vessel and he fired several times; soon came up with her, and she proved to be the schooner *Hero*, and boarded her; inquired why they did not heave to at the first fire; master of the *Hero* answered him that no colors were shown, and he did not know that anything was wanted of him; the papers of the *Hero* were then demanded and delivered, and two men taken from her and put on board the tender, and two of the tender's men put on board the schooner; the tender was then piloted into a harbor by me, taking with her the *Pilgrim* and *Hero;* the master of the tender inquired if there was any custom-house officer of his Majesty on the island; being informed there was not, then asked if there was any other King's officer, and was told there was not except the pilot; then went ashore and examined till about 11 o'clock at night, when with difficulty he came on board again, and was very violent; laid there three days; then got under way and went up to the Wolves islands, and went ashore; tarried there a short time, then asked me to pilot him into Beaver harbor; there ordered all sails of his own and the two other vessels unbent and carried on shore; then asked him to permit me to go home, as I had done before, but he refused; told him I would give him a bill of sale of the boat if he would let me go, she being mine, but he declined; I complained of hard treatment, and he threatened to shoot me and to tie me; next morning directed sails brought on board and bent; got under way and beat out of the harbor, bound, as he said, to St. John's; saw a vessel, and inquired if I had seen an armed brig; being answered that I had seen her at St. John's, we returned to Beaver harbor and tarried that night, then started again for St. John's; beat up about halfway to St. John's, and anchored in a place called Mason's Bay in the evening; about 10 o'clock the coxswain came on board the *Pilgrim*, I having been previously sent on board of her to sleep, and brought a pint of rum, and ordered the men to keep a strict watch, and left us; as soon as the lights were out on board the tender, one of the men on board of us from the tender being below asleep, the other one proposed going away with the *Pilgrim* to the United States. We soon got the *Pilgrim* under way and started for Lubec. The man who was below asleep then came on deck and asked where we were going. I told him to Lubec. He told me as there was but little wind he thought we should be caught, and had better go back. I said we would keep out of their reach. He said, if taken, they would shoot him; and then went below, and soon came up with two cutlasses, and said he would split any man's brains out, in the King's name, that offered to resist him. This it was advised that he should do to clear him from harm in case we should be taken, he having agreed before we started to the adventure; and he ordered the man to desist who was rowing, then knocked off Captain Woodward's hat. I then went and took one of the swords from him, and the other he laid down and went below. We came on home to Lubec with the vessel, obtained an anchor, and in four or five days after sailed again on to the Bank of Grand Menan, fifteen miles or more distant from the island, and continued there fishing four or five days, one of the men who came from the *Dotterel* still continuing with us by his own desire. Was informed that the schooner *Hero*, an American vessel which had been captured, was fitting out and armed by the British to take me; saw the *Hero* soon after boarding several vessels, and got under way and went up to

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Mount Desert, and fished there four or five weeks, and then returned to Dennysville and washed out our fish, and eight days after sailed again, and went on to Marblehead Bank, so called, and began to fish, the island of Grand Menan bearing north northeast, eighteen leagues distant, and continued to fish there six or eight days; then stood into Grand Menan Bank, being five or six leagues distant from the island, and anchored, and laid to, being Sunday, and all turned in. Soon the Brig *Dotterel* came upon us, and sent a boat with five men on board, with cutlasses drawn; inquired for Martin, the man who had come away with us, and continued to fish with us. I told him I did not know; believed he had gone to Boston; asked me if I was skipper of the vessel, and answered I was in place of one; asked for the papers, and I declined delivering them; told him they had one set of her papers; was told to get into the boat and go on board the brig, and did so. They then got the *Pilgrim* under way; the captain of the *Dotterel* asked my name; was told it; said he had got a pretty good history of my character; told him I had not robbed anybody, or killed any one, or stole anything; he asked for Martin; was told I did not know; believed he had gone to Boston; then said to him, if you are going to keep the vessel, if you will put me on board one of these fishermen, that I may go home, I shall be much obliged to you. Home! said he; yes, if you want to go home, I will carry you home to Halifax, where I will have you tried and hung. I asked him to let me go on board the *Pilgrim* and get my clothes. He said no, damn you, you shan't have any clothes; asked again for my clothes, and was permitted to go and get them; asked him if he was to give me anything to eat; he said no; asked him if I should fetch some provisions from my own vessel, and how much; he said fetch a week's provision; went aboard the *Pilgrim*, and was putting up some provision, when Jones, who was on board, and had command of the *Pilgrim*, called me up; told him the captain told me to get some provision, but he would not permit me to get more than twelve or fourteen biscuit, and four or five pounds of pork; was ordered to get into the boat and go on board the brig. By this time they had searched in the hold of the vessel, and found Martin hid there, and put him in the boat. When we went on board the brig, found five or six marines, with muskets and fixed bayonets. They took Martin and carried him below. I was sent aft, and kept there, guarded by marines, till 8 or 9 o'clock in the evening. Soon after, was sent down the after hatchway, and shackles put upon my ankles, and a large bar of iron put through them and fastened to the deck, and an old sail, with the ropes in it, given me to lie on; and thus I was kept four days, then took out and carried me, under guard, upon the quarter deck, where I found the officers paraded. Captain charged me with threatening their men's lives, and threatening to throw them overboard; I told him I had done no such thing; he said Paine (who was the man on board the *Pilgrim* that came up with the swords) had told him so, and that I would have done so, unless I had been prevented by Scott, one of my own men. I told him I could not have used a brother better than I did Paine. Captain then said if I would tell him where the *Ruby* and *Reindeer* were he would let me go with my vessel. Told him I did not know, and if I did, would not tell him. We had now arrived at Halifax; asked the captain what he should do with me; he said I should be carried to St. John's and

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hanged. Asked him for something to eat, telling him my own provisions were all gone; he said I ought not to have anything to eat. The next day I asked him again for something to eat, having had nothing; said he had not yet seen the Admiral, and I could have nothing till he had seen him. I then told him I had robbed no one, was no pirate, but thought he was; for if I was to be put to death he should do it like a man, and not starve me to death; told him I wished to go ashore and be put in prison. On the fourth day after I made application for food, and had none for all this time; was taken on deck, and told I was to go to St. John's to be hung, and two-thirds of a sailor's allowance given me, and continued this way sixteen days, and then came out and came on to the Banks of Grand Menan, and the next morning made a harbor in New Brunswick; then went to St. John's, and captain went on shore and came back, and sent the pilot down to me, who told me to go to the captain and tell him that you will give him a bond for sixty dollars to bring the vessel to St. John's, and he will give you an order for her, and you take good care not to fetch her here. I went up, and captain said, I suppose you want to go home, don't you? I answered yes. I suppose if you went home you would give me a pretty name, would you? Told him I would give him no worse name than he deserved. Then asked if ever I was in jail there. Told him no. He said I should be before night. Told him I should prefer that to being on board. He then told me if I had any friends in St. John's that would give him a bond for forty dollars, I might go to Halifax and get my vessel, and bring her to St. John's. I went ashore in his boat, procured a bond, and brought it to him; he then told me I must not give him a bad name, but be thankful that he had let me go and given me my vessel; he took the bond for forty dollars to deliver the vessel there in thirty days, and gave me an order for my vessel; said, you will take care, I suppose, not to come with her. Told him thought I should. I then quit his vessel, and came directly home. The vessel is still at Halifax, I suppose; I have not been after her. The above is a true history of the whole proceedings of the *Pilgrim* this season. I have been in her all the time. She has never been in any British harbor except where mentioned, nor fished in any other place than is above stated. The loss of property is one thousand dollars.

JACOB WINSLOW.

Sworn to before—

ETHER SHEPLEY.

NOVEMBER 5, 1824.

[Inclosure No. 11.]

William Howard, aged fourteen, on oath, declares: That he, with two other boys, aged seventeen and thirteen, last August took a small boat belonging to Mr. Thomas Brown, the boat having about fifteen feet keel, and went down the bay a fishing, and passed by the little island called the Thum-Cap, about half a mile, and fished there about an hour and a half; then went towards Casco Bay island, and fished perhaps three-quarters of an hour, then started to come home; got up to Friar's Bay, in Campo Bello, and the *Dotterel* hailed us; we went up and on board the *Dotterel* and they took our boat and moored her alongside, kept us until next morning, and then set us on shore on

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Campo Bello; they have detained the boat and used her, and still do, as a boat for the *Dotterel*. Have often seen the boat passing in the waters with the *Dotterel's* men. We went out for pleasure fishing, and to get a fresh fish for our own use. William Howard is an apprentice to a blacksmith.

WILLIAM HOWARD.

Sworn to before—

ETHER SHEPLEY.

NOVEMBER 6, 1824.

Benjamin Newman, on oath, declares: That he has heard the statement signed by William Howard read to him, and that the facts therein stated, except so far as they relate to the use of the boat by the Dotterel, are wholly true.

BENJAMIN NEWMAN.

Sworn to before—

ETHER SHEPLEY.

NOVEMBER 6, 1824.

[Inclosure No. 12.]

Thomas Brown, on oath, declares: That he was the owner of a small boat which William Howard and two other boys took and went out to fish in. They came back without the boat, and said she was taken from them by the *Dotterel*. I went to St. Andrew's to find her, and asked one of the officers of the *Dotterel* to let me have the boat, but was told I could not have her. I then applied to Mr. Dunn, the Comptroller of the Customs at St. Andrew's, to get him to intercede with the captain of the *Dotterel* for the boat. He answered me that he could not; that no report of such a seizure had been made to him; that the captain was a bad fellow, and had the day before insulted the custom-house. I returned without the boat; have since observed her to be used by the *Dotterel's* men, and believe she is still in use as a boat to the *Dotterel*. She cost me about twenty-two or three dollars, with the apparatus.

THOMAS BROWN.

Sworn to before—

ETHER SHEPLEY.

NOVEMBER 6, 1824.

[Inclosure No 13.]

I, Elisha Small, master of the schooner *Ruby*, of Lubec, on oath, testify and declare: That I sailed the eighth day of July, fitted out for the fisheries, and went on and near to the Grand Menan Bank, and continued there to fish sixteen or seventeen days; then ascertained that our wood and water were expended: the wind blew heavy from the north, and after attempting, without success, to gain the American shore, put in to Grand Menan, in Two Island harbor, to procure wood and water; this was the twenty-fifth day of July, in the afternoon, and laid there till the next morning, having obtained my wood and water; and by 5 o'clock next morning got under way to go out of the harbor; soon saw the barge of the *Dotterel* lying under the Green islands, and said to the others we should be taken; the wind died away; we were becalmed, and the barge came down upon us and took

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us. The *Reindeer*, the *Friend*, and the *Diligence* being near, small lines were passed from my vessel to the *Reindeer* and the *Diligence*, I being between them. When the barge came within, say one hundred rods, she fired over our heads, and then a second time near us, without speaking us; then came near and ordered the *Reindeer* to let go her anchor, and all to cast apart; the anchor was let go; then he went and boarded the *Friend*, which lay thirty or forty rods distant; then came again with their arms for action, and ordered us to cast apart, which was done; the reason we did not cast apart at first was, that we did not fully understand the order; then took possession of the *Reindeer*. I then went on board the *Reindeer;* he then came and took possession of the *Ruby*. I asked why he took me, and asked him if I was not allowed to go in for wood and water; he said I was, but it was time I was out; told him I had departed before I had obtained as much as I wanted. I mentioned to him that the treaty allowed us to go in for wood and water; he said he did not care a damn for the treaty; every vessel he caught within three miles of the land he would make a prize of; he took out the crews and put my crew on board the *Diligence*, and the *Reindeer's* crew on board the *Friend*, and told the *Friend* and *Diligence* they might go; put a midshipman and three men on board the *Ruby*, and directed them to follow him to St. Andrew's, he being on board the *Reindeer*. We beat up round East Quoddy, and got up opposite Indian island, when the *Diligence* and *Madison* came upon us. The *Diligence* came upon the *Ruby*, having her own crew and five of my crew and two men from Eastport, twelve in all, on board, armed with muskets, and hailed us and told us to give up the vessel. I told the midshipman I would go below; he asked me not to go; said he would give up the vessel; he gave up the vessel. The *Diligence* took possession of her, and the midshipman and his men went on board the barge. The *Ruby* was brought in. The crews of the three vessels, which were connected in Two Island harbor, were never collected on board of my vessel, she being the middle one, with muskets and fish spears; nor was there any such show of resistance made, or any such collection of men on board of either vessel. When the vessels were retaken, there was not a gun fired till after they were both retaken, and then only by way of rejoicing. They gave out that they would have the *Reindeer* and *Ruby* if they had to burn Moose island. I did not, therefore, think it prudent to trust her at sea again. The loss to the owner and crew will be five hundred dollars.

ELISHA SMALL.

Sworn to before—

ETHER SHEPLEY.

NOVEMBER 6, 1824.

[Inclosure No. 14.]

I, Benjamin Small, on oath, declare: That I was a hand on board the schooner *Ruby* when she was taken by the *Dotterel;* that the statement of facts signed by Elisha Small has been read to me, and I know all the facts to be true which are related to have taken place before I came away in the *Diligence*. We came in the *Diligence* direct to Eastport. I went to Elisha D. Green, of Eastport, and told him I wanted ten muskets—it having been agreed between the *Ruby's* crew and the *Diligence* crew that we would retake the *Ruby;* he and

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another gentleman obtained for us seven muskets, and the two clerks in Green's store, one named Howard and the other Fields, said they would go with us. They went on board with me; there being then twelve in all on board, having seven muskets and two pistols, and two bayonets only, and went down behind Indian island, waiting for them; laid there about half an hour, and saw the *Madison* coming down; she spoke us, and Fields and Howard went on board the *Madison* and then returned, having agreed that the *Madison* should attack the *Reindeer*, and the *Diligence* the *Ruby*. Then all went below but three men; ran down and passed the *Reindeer*, and the *Madison* approached the *Reindeer*, and we the *Ruby;* I hailed the *Ruby* and told her to heave to, being only three of us on deck; I hailed again, and they did not obey; then the crew came up; then the men on board the *Ruby* let go the jib sheets and fetched her up into the wind; then our crew, and the two clerks, and James Leighton, skipper of the *Diligence*, went on board the *Ruby* and took possession of her; the men belonging to the barge left her and went on board the barge; we then hoisted American colors, discharged our muskets, and ran into Eastport. No muskets were fired till after the vessels were retaken and the men belonging to the barge had left them.

BENJAMIN SMALL.

Sworn to before—

ETHER SHEPLEY.

NOVEMBER 6, 1824.

[Inclosure No. 15.]

Benjamin W. Coggins, of Lubec, master of the schooner *Friend*, of Lubec, on oath, declares: That he sailed from Lubec the 20th of July last, and went on to the fishing ground, four or five leagues from Grand Menan. On the 25th, seeing Small, of the *Reindeer*, going in, and wind blowing fresh, and water short, followed him into Two Island harbor, and anchored there about 4 o'clock p. m.; went ashore and obtained what water I could, and got it on board about 9 same evening; wind had then died away; I could not get out. At 5 next morning a light breeze from northwest; got under way, and went out in company with the *Reindeer*, *Ruby*, and *Diligence;* wind died away, and vessel floated with the current. Barge of the *Dotterel* soon came upon us; the other three lay together, and barge fired over them; directed one to let go her anchor, and then came to me; asked me what business I had there. I told him I was becalmed, and could not get out. He said that is a damned pretty answer to give me, when the wind was blowing here a gale all day yesterday. I said yesterday I went to Two Island harbor to obtain water. He then directed my sails to be hauled down and my anchor to be let go, which was done. He then left me, and directed the other vessels to cast apart; they did so, and came to anchor; he boarded the *Reindeer* and took possession of her, and sent her crew on board of me, and they asked him, what if I would not take them? He told them to take my vessel then, and go to Lubec; and I then took my boat and went to see Jones, and asked him if he was going to send me to Lubec with the men? He said he was, and told me he would give me orders when I should get under way. In about half or three-quarters of an hour he gave me a signal to get under way. I did so, and after getting out of sight, told the *Reindeer's* crew that if I could get up to Lubec before they got up,

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would get some assistance there, and go with the *Friend* and retake the *Reindeer*. Came up as fast as I could, and my vessel grounded before I got in; then hove out the boat, and *Reindeer's* crew got into the boat with me and one of my crew, and the *Diligence* towed us up to Lubec. Then went to the revenue cutter, Smith; told him the story, and asked him if he could not go and retake them as they came in by East Quoddy? He said he could not, but gave me a line to the Collector; the Collector refused to let the cutter go. Then went to the wharf and hailed my brother, who was master of the *Madison*, and asked him if he would let the *Madison* go and retake the *Reindeer*, if I could obtain a crew; he said he would. I called round to get men to go on board; got four, and two rifles, and two muskets, and two pistols, and powder and ball; took the men on board the *Madison*, and went to Eastport, then having seven men and four muskets, my brother having the command. When at Eastport, hailed the men on the wharves, and asked them to send us two more muskets; they did send us two, and a man came with them; then ran down and spoke the *Diligence*. Mr. Howard and Mr. Fields came on board, and it was agreed that they should board the *Ruby*, and me the *Reindeer*. We then ran down for the *Reindeer*, and they for the *Ruby*. We boarded the *Reindeer* first, my brother having charge, and being on deck with one man and one boy, the rest below. Brother hailed him, and told him to heave to. Mr. Jones called his men to quarters; brother told him he would give him five minutes to consider whether to give the vessel us before he compelled him to do so, and run his vessel so near that we could step from one vessel to the other. Jones said, the first man that steps his foot on this vessel shall be a dead man. Brother then called all hands from below, and we went up with our muskets, seven of us, there being only ten men on board, besides two or three boys. Jones then laid his sword down and said, the vessel is yours. We put four men on board, and told skipper Small to make his way to Eastport. Jones then went on board his barge with his men. Then brother hailed him; asked him to come on board the *Madison* and take something to drink, and he did. He then said we were good fellows for having retaken them; he took them according to his orders, but without any provocation, and was glad we had got them; he then went his way, and we ours. There was no gun fired till after the vessels were recaptured. Mr. Howard is a lad, 17 or 18 years old; has never been a captain of any company of militia. I have heard that he was captain of a company of boys, in Eastport, who trained with wooden guns and swords.

On the 29th of August last, being on Grand Menan Bank, saw the *Dotterel* take possession of the *Pilgrim*, she being then about nine leagues distant from the Grand Menan. The *Madison* was also captured at the same time and place.

The injury to me, by breaking up my fishing cruise, has been five hundred dollars.

B. W. COGGINS.

Sworn to before—

ETHER SHEPLEY.

NOVEMBER 6, 1824.

Henry Coggins, on oath, says: He has heard the statement signed by B. W. Coggins read; is acquainted with the whole transactions on

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board the *Friend*, and knows them to be truly stated. Saw the *Pilgrim* and *Madison* taken, the 29th of August, on the Bank, nine leagues distant from the island.

HENRY COGGINS.

Sworn to before—

ETHER SHEPLEY.

NOVEMBER 6, 1824.

[Inclosure No. 16.]

NOVEMBER, 7, 1824.

I, Harding Clark, of Dennysville, master of the schooner *Hero*, of Dennysville, on oath, do testify and say: That I sailed on the thirteenth day of June last, fitted out for the fishery, and proceeded on to Grand Menan Bank, and continued to fish until the sixteenth; then struck adrift in the forepart of the day; made an attempt to regain our ground, but not succeeding, the barge of the brig *Dotterel* came upon us, fired and boarded us; demanded our papers, which were given up, and took possession of the vessel, she being then from six to nine miles distant from the land. Two of my men were taken out and two of his put on board my vessel, and I was directed to follow him. I did follow and wait his movements for fourteen days, during which time he was employed in boarding vessels. Was during the time in Beaver and other harbors. Often asked him to let me and my crew go home, there being opportunities, but was denied. One of the men being sick, was detained on board the barge, and did duty there as did the other. At the expiration of the fourteen days arrived at St. John's; were all there put on board the *Dotterel;* were detained there two days with only one meal of victuals, and then put on shore and dismissed. Captain told me he had given the vessel up to the custom-house; went to the custom-house; was there told he had not. Asked if I could see the captain again, and he was sent for, and he came; asked him to give up the vessel, telling him I did not consider her liable to seizure; he said he would think of it; said he wanted her for about a fortnight's cruise, and did not know but he should give her up to me then. I returned home, and went there in a fortnight, as he desired me. The *Hero* came in from a cruise three days after I arrived there, having been out cruising thirteen days. She then took in supplies for another fortnight's cruise, and sailed again the same day, under the command of the pilot of the brig. Saw the Captain, and asked him if he would let me have the vessel, as he had agreed to; he said he had made a new arrangement, and should not let me have the vessel. I came home again and left her. When last at St. John's, I applied to Messrs. Crookshanks and Johnson, merchants of St. John's, to ascertain when she was libelled or proceeded against; and about three weeks ago received a letter from them stating that the *Hero* had not been libelled, but had been employed as a tender to the *Dotterel.* The vessel was owned by Manning Clark and myself. The loss is not less than nine hundred dollars. I have not been out before this season; this being the first and only cruise this season.

HARDING CLARK.

Sworn to before—

ETHER SHEPLEY.

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[Inclosure No. 17.]

I, William Rumery, of Lubec, testify and say: That I was a hand on board the schooner *Madison*, of Lubec, fitted out for the fisheries; that we sailed about the 25th of August last, and went on to Grand Menan Bank, about twenty-one miles or more from land, and fished till the 29th of the same month; saw a brig bearing down upon us; soon hailed us; asked the name of the vessel; skipper not being then on board, I answered, the *Madison;* sent a boat aboard and ordered all the crew aboard the boat, and carried us on board the brig *Dotterel;* ordered the *Madison* under way for Halifax; ordered us under the forecastle deck, among the goats and fowls, where we remained four days; gave bread and water to us once a day; arrived fourth day at Halifax, and set us all ashore but Robert Rumery; told us we must get a passage home as we could; we got a passage and came home, leaving the *Madison* at Halifax, where I suppose she is now. The fish and salt they sold out of her, in harbors on the way, before they arrived in Halifax. The injury and loss is about nine hundred dollars. I saw Winslow in irons at Halifax.

WILLIAM RUMERY.

Sworn to before—

ETHER SHEPLEY.

NOVEMBER 6, 1824.

[Inclosure No. 18.]

I, Robert Rumery, on oath, declare: That I have heard the statement signed by William Rumery read, and know that it is wholly true. I further state, that after the remainder of the *Madison's* crew left us, I continued on board the *Dotterel* sixteen days; my brother William left me a little provision; after that was gone, I had nothing for two days; then had two-thirds of a seaman's ration, except grog; then got under way and came to L'Etau harbor, Deer island; asked lieutenant what he was going to do with me; said I should be carried to St. John's and put in prison until my trial, and, no doubt, I should be hung; then got under way and went to St. John's; laid there four days, then was told I might go on shore; went ashore and thence home.

I was a hand on board the *Madison* when she was going out and met the *Diligence* and *Friend* bringing in the crews of the *Reindeer* and *Ruby* that had been captured. After learning the facts, we put about and ran into Lubec and anchored. Benjamin Small wanted us to go with them and help take the *Reindeer* and *Ruby*, as the *Friend* had got aground, and Captain Ansel Coggins, of the *Madison*, agreed to go, and all the crew but one, and took on board seven or eight others; there were not more than twelve or, at most, fifteen on board; had a number of muskets, but no bayonets; then went down upon the *Reindeer;* our skipper hailed them, and told them to heave to; Jones told his men to prepare for action; we hailed a second time, and Jones ordered the fore sheet cast off, and told Robert Small that he might take charge of his vessel and carry her to Eastport. Jones and his men went aboard the barge, having first come on board of us and drank some grog by invitation, and we went to Eastport. No guns were fired until after the *Reindeer* was retaken and Jones had

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left us and gone on board of his barge, and then only by way of rejoicing.

WILLIAM RUMERY.

Sworn to before—

ETHER SHEPLEY.

NOVEMBER 6, 1824.

[Inclosure No. 19.]

COLUMBIA, *September 27, 1824.*

SIR: Inclosed is a regular protest in relation to the capture of the schooner *Rebecca*, which case, with others, it is hoped, will receive the attention of Government.

Respectfully your obedient servant,

STEPHEN EMERY.

Hon. JOHN QUINCY ADAMS, *Secretary of State.*

[Sub-inclosure.]

UNITED STATES OF AMERICA, *State of Maine, Washington, ss.*

Be it known, that on the twelfth day of July, in the year of our Lord one thousand eight hundred and twenty-four, personally appeared before me, Solomon Thayer, notary public, by legal authority duly admitted and sworn, and dwelling at Lubec, State and county aforesaid, Jones Wass, master of the schooner *Rebecca*, of Addison, and noted his protest. And now, on this ninth day of September, anno Domini 1824, he again appears to extend the same; and with him also appears John Wright, fisherman, belonging to the said schooner, who, being severally sworn, do depose and say: That on the twenty-ninth day of June, now last past, they sailed in said schooner *Rebecca* from Addison on a fishing cruise on the Grand Menan Banks, and arrived there on Thursday, the first day of July, and commenced fishing at a distance of fifteen miles from land; continued to fish during that day. On the next night, the wind springing up quite fresh, were obliged to run into Grand Menan for a harbor. Arrived at Duck island, so called, and anchored at 2 o'clock Friday morning; went on shore and obtained a barrel of water, having a half barrel only on board. In about an hour from the time of anchorage saw an armed boat making towards us; up anchor and stood to sea. The armed boat gave chase, and continued it all the next day, frequently firing muskets at the schooner *Rebecca*. As soon as it came on dark she lost sight of us; we were then near the Nova Scotia shore. We then put back to Grand Menan, and arrived there the next morning. Immediately made for the fishing banks and continued to fish there that day. At night, the wind blowing quite fresh, run in for a harbor. The next day, being the fourth of July, and Sunday, went on to the Banks and anchored; the next morning commenced fishing, and caught twenty quintals. The following night, wind fresh, hove up and laid to under our foresail until morning; then run into Bucks Rock, so called, near Grand Menan, to procure wood and to dress our fish. In about half an hour after we arrived the same boat that had chased us on Friday came upon us, and took forcible possession of the *Rebecca* and her papers, ordered her underway, and took her to the city of St. John's and stripped her.

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The declarants further say, that during said cruise they did not fish within from twelve to fifteen miles of Grand Menan, nor run in near the land, unless to get water, purchase wood, and from stress of weather.

The said Jones Wass, for himself, saith: That on the seventh day of September, now current, he left the city of St. John's, where he had been to solicit the liberation of the said schooner *Rebecca*, but that said schooner had not then been libelled for trial, and that he was told by Charles J. Peters, the judge of the Vice Admiralty courts for the province of New Brunswick, it was uncertain when she would be.

Wherefore, they do protest, and I, the said notary, in their behalf, do solemnly protest against said armed boat; against pirates, and the wanton abuse of power by armed boats on the high seas under pretence of authority; against being deprived of rights confirmed to American fishermen by the convention of Great Britain of 1818; and against winds, seas, and tides, and whatsoever else may have caused the capture and wanton detention of the said schooner *Rebecca*, of Addison.

JONES WASS.
JOHN WRIGHT.

In faith whereof, I have hereunto affixed my seal and subscribed my name, the ninth day of September, anno Domini eighteen hundred and twenty-four.

[SEAL.] SOLOMON THAYER, *Notary Public.*

Mr. Addington to Mr. Adams.

WASHINGTON, *February 19, 1825.*

SIR: On the 8th and 21st of September last I had the honor of receiving, from the Department of State, two letters, in which my good offices were requested in behalf of certain individuals, of the State of Maine, engaged in the fishing trade, who desired redress and reparation for injury done them by the seizure of their vessels, by his Majesty's sloop *Dotterel*, while employed in cruising on the coasts of his Majesty's North American possessions.

I informed you, sir, in reply to these communications, that I should forthwith address an application to the British naval commander-in-chief on the North American station, recommending that a full and impartial investigation should be instituted into the various cases which formed the grounds of complaint on the part of the American Government.

I have the honor to transmit to you, herewith, copies of a correspondence which took place, in consequence of my application, between Captain Hoare, commanding his Majesty's sloop *Dotterel*, and Rear Admiral Lake, in reference to the cases set forth in your letters above mentioned. The depositions of the officers and men concerned in the capture of the Rebecca, Ruby, Reindeer, William, Galeon, Pilgrim, and Hero—vessels therein enumerated—are also annexed.

By a perusal of these documents it will, I trust, sir, most conclusively appear to you that the complainants have no just ground

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of accusation against the officers of the *Dotterel*, nor are entitled to reparation for the loss they have sustained; that, on the contrary, they rendered themselves, by the wilful irregularity of their own conduct, justly obnoxious to the severity exercised against them, having been taken, some *flagrante delicto*, and others in such a position, and under such circumstances, as rendered it absolutely impossible that they could have had any other intention than that of pursuing their avocations as fishermen within the lines laid down by treaty as forming the boundaries within which such pursuit was interdicted to them.

With regard to the charge preferred against Captain Hoare, of his having converted detained American vessels, prior to their adjudication in the courts, into tenders for assisting him in his operations against the vessels of the same country, I have only to observe, that that officer broadly, and in the most explicit terms, denies ever having committed or authorized one such act; and in respect to the other accusation, adduced by the complainants, of maltreatment by the British officers of those persons whose vessels had been detained, I trust that a perusal of the inclosed papers will make it equally clear to you that that charge is entirely unfounded.

I cannot but apprehend, sir, that the acrimony with which the proceedings of Captain Hoare have been viewed by the citizens of the State of Maine, employed in the fishing trade on the British North American coasts, may be justly ascribed to the circumstance of the recent substitution of vigilance, on the part of British cruisers, for the laxity which appears to have prevailed heretofore, in guarding those coasts from the intrusions of foreign fishermen and smugglers; and I doubt not that, if those persons could be prevailed upon to confine themselves within the limits prescribed to them by treaty, no cause of dissension or complaint would ever arise between the individuals or vessels of the two nations.

It remains for me to observe, that, in one case, in which, by the ignorance of the midshipman employed in the service, the territory of the United States had been violated, by the pursuit and seizure of an American vessel within the American boundaries, Captain Hoare made all the reparation in his power for his officer's misconduct, by delivering up to the Americans the boat which had been detained and paying all the expenses incident to her detention.

I have the honor to be, with distinguished consideration, sir, your most obedient humble servant,

H. U. ADDINGTON.

ENCLOSURES.

[Report of Captain Hoare, with accompanying statements of Jones, master, Protheroe, mate, and affidavits of seamen of the British ship *Dotterel*.—Enclosed.]

[Inclosure No. 1.]

HIS MAJESTY'S SLOOP DOTTEREL,
Halifax, November 25, 1824.

SIR: According to your direction, I have made the strictest investigation, and inclose the reports of Mr. Jones, master, and Mr. Proth-

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eroe, mate; also, the testimony of the several men belonging to their boats, relative to the several American fishing vessels they had seized, which I trust will be sufficient proof of the propriety of detaining those vessels; and, as the American fishermen do not keep any journal or log, there cannot be possibly any proof but the crews of the boats detaining them and the Americans; it is not to be supposed that the latter will acknowledge to have violated the treaty existing between the two Governments relative to the fisheries. I think you will perceive a consistency throughout the several reports of Messrs. Jones and Protheroe that will bear the stamp of truth. Why should they detain these vessels if they had not violated the laws? It could not be for their value, they had little or nothing in, and they knew if they were condemned and sold they would sell for a mere trifle, the best of them not more than forty dollars; there were many other American fishing vessels of much more value, which they might have seized, if it was merely to annoy them, or for the sake of what they might sell for; but it is known everywhere in the Bay of Fundy that the American fishermen have invariably made use of the several harbors in the Menan as if those islands formed a part of the United States; they come in and haul their nets, and there are many instances of their having cut away the nets of the islanders; and I was informed by the fishermen at the Menan, previous to leaving the Bay of Fundy, that they had taken treble the quantity of fish this year to that of any preceding year since the war, and they ascribed it entirely to the American fishermen having been kept without the distance prescribed by treaty (three marine miles) from the shore. The former cruisers in the Bay of Fundy (*vide* Captain Arabin's letter, dated his Majesty's sloop *Argus*, off Bermuda, December 17, 1822,) have not paid much attention to the fisheries off Menan, and consequently the American fishermen have gone into the harbors whenever they pleased, and being more numerous than the inhabitants have overawed them; but I have been informed by some of the fishermen resident there that more than once they have had it in contemplation to represent the conduct of, and the injury they have sustained from, the American fishermen, but their living remote from each other, and no educated persons among them, they have been at a loss how to draw up a petition, or who to apply to for redress.

As all the vessels alluded to in the papers sent by Mr. Addington were taken by the boats, I cannot, myself, make any observations on their capture, but shall confine myself to a few remarks on the protests of the American fishermen, and to answer the complaint you have called my particular attention to.

Why do not the crews or owners of the American fishing vessels, detained for violating the treaty, come forward when these vessels are adjudged in the Vice Admiralty court, and produce such evidence as would clear them? they say, to claim their vessels in the Vice Admiralty court of New Brunswick would be a total loss; the fact is, it would not answer their purpose so well; they are well aware that witnesses could be produced that would falsify their testimony; the fishermen at the Menan would immediately come forward to witness the facts of their being in their harbors, and drawing their nets, when not in want of an article of provisions or fuel; but the Americans are aware that when their protest comes before the commander-in-chief

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of this station, the vessel-of-war will have left the Bay of Fundy, and that there will remain but the testimony of the officer and boat's crew that detained them, which they will take care to outnumber. If the Vice Admiralty courts of New Brunswick are conducted illegally and wrong, should they not make a representation to the British Government, that they may be better conducted? How is the captain of a man-of-war, stationed in the Bay of Fundy, to act, if the proceedings in the Vice Admiralty court are to be considered illegal and void, merely from the protest of some American fishermen?

What are the Vice Admiralty courts instituted for, but to try causes, and decide whether the capture is just; and I should conceive that where they have passed judgment, the captain of the seizing vessel is released from further responsibility; sufficient time is allowed all parties to procure and produce evidence, and if they do not come forward, is it not a tacit acknowledgment of the badness of their cause—and such is the case with these American fishing vessels; they have asserted many things that are wholly false. It is said in the memorial A, "that nine sail of American fishermen had been captured and sent to the province of New Brunswick, while others had been converted into tenders, without trial, for the purpose of molesting our fishermen; they have insulted and abused the crews, turned them on shore in a foreign country, entirely destitute, and without the means of returning to their homes."

That any American fishing vessel detained by the *Dotterel*, or her boats, has been converted into a tender for the better molesting their fishermen, is wholly false; that the crews have, to my knowledge, been insulted and abused, must be a gross and wilful perjury; it had always been the custom, I understood, to allow the crews of the vessels detained to take their clothes and such provisions as they pleased, and find their way to the States. I have sometimes offered to carry them back, when I returned to Passamaquoddy; they have invariably been allowed to take away everything they could claim as their private property, and the whole of their provisions on board their vessel, with which they paid their passage back to their country.

And in the memorial C it is said "that the American fishermen have no occasion nor inducement to violate the provisions of the aforesaid convention, nor have they, as we firmly believe, given in any instance just cause of complaint."

It is a well known fact that the American fishermen leave their fishing ground every Saturday, (when there is not a man-of-war or her boats in the neighborhood,) and anchor in some of the harbors of the Menan until the Monday, bringing in the fish offal with them, and throwing it overboard on the inner banks, by which they drive the fish off those banks, and they haul their nets during the Sunday, and catch sufficient bait for the ensuing week. This they suppose is not known; for they are not ignorant that this is a violation of the provisions of the convention; the fact is, they want, by causing much trouble, to deter the man-of-war stationed in the Bay of Fundy from interfering with them at all.

That the brig's barge has come into the wharf at Eastport and taken and carried away two boats laden with flour, Lieutenant Driffield's letter on that subject will, I think, completely invalidate that charge.

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That the *Hero*, American fishing vessel, captured on the 16th of June, has not been sent in for trial, but is armed, and is still used as a tender to the *Dotterel*, is entirely false. She was not used by me to annoy a single American vessel; and on her arrival at St. John's was delivered over to the Collector of the Customs, and ought long ere this to have been adjudged in the Vice Admiralty court. "That the officers having charge of the armed boats of the *Dotterel*, ordered to cruise round Grand Menan and Campo Bello, have written instructions, which have been exhibited, to seize and send into St. Andrew's all American fishing vessels found within three marine miles of the said island." My order to the officers of the boats has been, that any American vessels they may find within three marine miles of the shore, except in evident cases of distress or in want of wood or water, they are to detain and send or carry them to St. Andrew's.

I have the honor to be, &c., &c.,

RICHARD HOARE, *Commander.*

Rear Admiral LAKE, *&c., &c.*

[Sub-inclosure 1.]

HIS MAJESTY'S SLOOP DOTTEREL,
Halifax, November 8, 1824.

SIR: I beg leave to represent, in obedience to your orders of this day's date, directing me to give a statement of the facts, and under what circumstances I detained the American fishing schooners at different anchorages at the Grand Menan, while cruising in the yawl, in pursuance of your orders, for the protection of our fisheries, that on the 2d day of July last, on boarding an English vessel, I found a man named Wright officiating as pilot, to carry her to Grand Harbor, who told me that he belonged to the American fishing schooner *Rebecca*, then at anchor at Woodward's Cove, and that they came there for water. Satisfied with his assertion, I continued cruising, and, shortly after, I observed the American vessel getting under way, leaving the said man (Wright) behind. I ran down towards her; they not heaving to after we fired several shots across their bow, I chased her over to the Nova Scotia shore, where I lost sight of her. On the 6th following, I found the said American schooner *Rebecca* at anchor, cleaning fish, and throwing the offals overboard, and the aforesaid man (Wright) on board. It being fine weather, and they having three barrels of water on board, with a sufficient quantity of wood. I detained her and took her to St. John's.

On the 15th of the same month I found the American fishing schooner *William* anchoring in Gull Cove; the weather was fine until after she got in, when it came on foggy with light breezes; and they having two barrels of water on board, which myself, Mr. Touzeau, and the boat's crew, subsequently used from, and plenty of wood, I detained her. Having found the American schooner *Rover*, of Addison, Crowley master, landing a great part of her cargo of green fish to a Mr. Fowler's, at Gull Cove, I made the *William's* boat fast to the yawl for the night, to prevent their crew from doing the same. As for their getting water about sunset, and a vessel to anchor alongside of them, Mr. Touzeau and I know it to be impossible, as I had a sentry planted on shore about two cables' length from them; and if

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they received any water after dark, it was done as a pretext, for the boat's crew were witnesses to the water I found on board when I first boarded her; and that I threatened to confine the master to the deck and lash a pump brake across his mouth, as stated in their protest, is false. On my first boarding her, with only three men in our small boat, they were very abusive to us, and one of them said, if they were all of his mind, they would heave that fellow overboard, pointing to me. I told him if he did not keep quiet I would lash him to the deck. At 3 p. m., same day, 15th, I received information from the fishermen at Gull Cove, as well as from the master and crew of the fishing schooner *Minerva*, of Grand Menan, that an American schooner was at anchor at Beal's Passage. I went out from Gull Cove and saw her there; at 9 o'clock in the evening I boarded her, which proved to be the American fishing schooner *Galeon*, and found all the crew asleep. On questioning the master the reason of his being there, he told me that he came to throw the gurry, offal of the fish, overboard. They not being in want of wood or water, and a fine fair wind for them, I detained her, got her under way and ran for Gull Cove, a direct course for their fishing ground. What the crew of the last mentioned vessel asserted in their protest is not true; I never said that I would release their vessel, but told them it was not in my power to do it, as they had decidedly violated the treaty of convention between England and the United States; but as they pleaded poverty, saying their vessel was their sole support, I told them I would recommend their case to Captain Hoare, of the *Dotterel*, my commanding officer. Both schooners, *William* and *Galeon*, I took to St. Andrew's the next day. On the 25th of the same month I received information from the master and crew of the fishing schooner *Industry*, of Grand Menan, that several American fishing schooners were at anchor at Two Island harbor, and that two of them, namely *Reindeer* and *Ruby*, of Lubec, were at White Island harbor on the 24th, where they got their wood and water, and that, on their anchoring there, they told them and the inhabitants they were armed, and would not allow any man-of-war's boat to board them; and, after they had their supplies, they shifted to Two Island harbor. At daylight, the 26th, observed four schooners at anchor at Two Island harbor, which got under way on our appearance. When I got close, three of them they lashed alongside each other, and all hands, about thirty in number, went on board the middle one with fire-arms and fish spears. I desired them to separate, which they refused to do until I threatened to fire on them. On boarding them, they proved to be the *Reindeer*, *Ruby*, *Friends*, and *Diligent*, American fishing schooners. It being fine weather, and they not in want of wood or water, I detained the *Reindeer* and *Ruby*, and, by the sanction of the masters of the *Diligent* and *Friends*, I put the crews of the *Reindeer* and *Ruby* on board of them, with as much provisions as they wished to take, and on our passage to St. Andrew's the said schooners *Reindeer* and *Ruby* were forcibly taken from me by armed vessels, under American colors, as stated in my letter of the 27 of July last.

I have the honor to be, &c., &c.,

JOHN JONES,
Master of his Majesty's sloop Dotterel.

RICHARD HOARE, *Commander.*

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[Sub-inclosure 2.]

HIS MAJESTY'S SLOOP DOTTEREL, *November 9, 1824.*

SIR: In obedience to your orders, I herewith add a statement of the *Pilgrim* and *Hero*, American fishing schooners.

On the 16th of June last I observed these schooners lying off the Grand Menan, and upon approaching them, one of the schooners got under way and stood in for the shore; 3.30 p. m. observed the schooner under way heave her lines overboard and haul in fish, the schooner then within one and a half mile of the island; 3.40, fired and brought to the schooner; 3.45, boarded the *Pilgrim*, then about one mile or one mile and a quarter from the shore. She had on board fish, alive; took possession of her for a breach of the treaty. I then stood to the N. ¼ E. and boarded the *Hero*, who had made sail from in shore. Whilst I was on board the *Pilgrim*, and finding she was in want of nothing, I inquired what she had been doing so near the shore with her sails down, to which I was informed by one of the crew they had been cleaning their fish on shore; in consequence of which, and having seen her within one mile of the land, I took possession of her also; stood in, and anchored in Long Island harbor. Thursday, the 17th, being for the most part of the day calm, I remained at anchor. Friday, the 18th, at 7 a. m., weighed and stood for Beaver harbor; from 9 to 12, calm; 3 p. m. observed two schooners under the Eastern Wolf, then about one mile distant. It being calm at the time, I ordered the master of the *Pilgrim* to send me her small boat, not having one myself; upon receiving which, I ordered one of my seamen and one marine, armed, into her. The boy who brought the boat I told to remain on board until I returned; but on his expressing a wish to go, and knowing he was more acquainted with her than any of my men could be, I agreed that he should pull, and ordered my seaman on board; part of the way I pulled, and part of the way the marine pulled with the boy. When I returned, there being no appearance of wind, I ordered the schooners *Pilgrim* and *Hero* to follow me and anchor under the Eastern Wolf for the night. Saturday, the 19th, it being calm, did not weigh until 11 a. m., then a light breeze; stood for Beaver harbor, where I anchored at 3 p. m. with an intention of waiting for the *Dotterel's* arrival; therefore, unbent sails and caused the *Pilgrim* and *Hero* to do the same. Sunday, the 20th, 11 a. m., observed the *Dotterel* pass in the offing to the eastward; bent sails and desired the *Pilgrim* and *Hero* to do the same. 12.20 p. m. weighed, schooners in company, beat out of the harbor; but finding the *Pilgrim* and *Hero* could not, I bore up, stood in, and anchored, schooners in company. Monday, the 21st, at 7 a. m., weighed, with light airs, schooners in company; beat up and anchored in Mason's Bay at 8.30 p. m. Tuesday, the 22d, at 2.30 a. m., the sentry reported one of the schooners was gone. Wednesday, the 23d, fresh gales until 10 a. m., then light airs with heavy rain; still at anchor. Thursday, the 24th, at 9 a. m. weighed, with light airs, and stood for Point La Pro, *Hero* in company, but, falling calm, were obliged to put into Dipper harbor. Friday, the 25th, heavy rains, with strong breezes from the eastward; remained at anchor. Saturday, the 26th, weighed, but were obliged to put back again. Sunday, the 27th, weighed and ran up to St. John's.

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I further beg leave to state that I did detain on board the crews of the *Pilgrim* and *Hero*, having no authority for acting otherwise; that Winslow, in Beaver harbor, said he was aware of having fished within the limits, and if I would allow him and crew to go home he would give up his schooner and never again ask for her. Part of the men were at times on board my boat and living the same as my boat's crew, who had the allowance of the British Navy, excepting spirits, which had been all used; to make up for which, I gave from my private stock to those of the schooners who were on board my boat. I never asked them to do any duty on board my boat; nor did I, at any time, make use of harsh or menacing language. The duty done by the persons taken out of one or either of the said schooners was a perfect voluntary act of their own. The arms spoken of were taken from the *Pilgrim*, through expressions made use of by Winslow, for safety. Powder, a quarter of a pound; shot, about one pound. The arms were delivered to the gunner. The papers of each schooner were delivered to the custom-house at St. John's.

I have the honor to be, &c.,

S. R. PROTHEROE, *Mate.*

R. HOARE, *Commander.*

[Sub-inclosure 4.]

EVIDENCE OF MR. TOUZEAU, MIDSHIPMAN, AND THE CREW OF THE YAWL BOAT BELONGING TO HIS MAJESTY'S SLOOP DOTTEREL, RELATIVE TO THE DETENTION OF THE AMERICAN SCHOONER REBECCA.

Mr. Touzeau, midshipman, examined relative to the detention of the American schooner Rebecca.

Question. Were you in the yawl when Mr. Jones detained the American schooner *Rebecca?*

Answer. Yes.

Question. Do you know Mr. Jones' reason for detaining her?

Answer. Mr. Jones went down to board an English schooner, and one of the men who was on board, by the name of Wright, as pilot, belonging to an American schooner, told Mr. Jones that his vessel came in for wood and water, at which Mr. Jones appeared to be satisfied; and, on leaving the schooner, saw the American schooner getting under way; ran down and fired several shots across her bows to bring her to; she not heaving to, chased her across the Bay of Fundy. About 8 p. m. of the same day lost sight of her. Some days after, observed the same schooner at anchor near Gull Cove, cleaning fish and heaving the gurry overboard. Mr. Jones detained her, and she was subsequently taken to St. John's.

Question. How was the weather?

Answer. Perfectly clear and fine weather, with a moderate breeze.

Question. Was it fair wind to the fishing ground?

Answer. Yes; we sailed in that direction.

Thomas Richardson examined.

Question. Do you remember the circumstances relative to the detention of the American schooner *Rebecca?*

Answer. Yes.

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Question. Relate all you know about her.

Answer. When we first intended to board her she made sail from us; we then chased her over to the Nova Scotia shore, where we lost sight of her about 11 p. m. About three or four days after, we again saw her at the Grand Menan, lying about a mile from the shore, cleaning fish, throwing the gurry overboard. Mr. Jones then detained her, and carried her to St. John's.

Question. Where was she lying?

Answer. In some harbor at the Menan; but cannot recollect the name.

Question. What quantity of wood and water do you think she had on board?

Answer. About three or four forty-gallon casks, and about two cords of wood.

Question. How was the weather when you boarded her?

Answer. Fine weather and clear, with a moderate breeze.

Question. Do you know whether the wind was fair for the fishing ground?

Answer. Yes; the wind was fair.

Felix Shaw, private marine, examined.

Question. Were you in the yawl with Mr. Jones when he detained the American schooner *Rebecca?*

Answer. Yes.

Question. Relate what you know about her.

Answer. She came to anchor with another schooner in a small harbor in the Grand Menan. While we were lying there, the foretop-sail schooner got under way, and we boarded her. While on board of her, the other weighed and made sail. We then made sail after her, and chased her across the Bay of Fundy over to the Nova Scotia shore, where we lost her after dark. Some days after, we saw her again, at anchor within a mile of the shore, near Gull Cove, throwing the gurry overboard. Mr. Jones seized her and took her to St. John's.

Question. What quantity of wood and water had she on board?

Answer. I do not recollect.

Question. How was the weather when you detained her?

Answer. The weather was fine and clear, with a light breeze.

Question. Was the wind fair for the fishing ground?

Answer. I do not know the position of the fishing ground.

James Lloyd, private marine, examined.

Question. Were you in the yawl with Mr. Jones when he seized the American schooner *Rebecca?*

Answer. Yes, I was.

Question. Relate what you know about the detention of her.

Answer. While lying at anchor in the harbor—I believe the Grand Menan—I saw the schooner come in and anchor. While Mr. Jones was boarding another vessel under English colors, observed the master and two men go off to the schooner, and immediately got under way. When they got round the point of land, lost sight of her.

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Question. Where were you when you lost sight of her?

Answer. On shore, cooking the boat's crew's provisions.

Question. How do you know it was the master who went on board the vessel?

Answer. The people at the store told me so, and said he had been there frequently, and had asked them for water, which they had refused him. His reply was, if he could not have it by fair play, he would be damned if he would not have it by foul.

Question. When did you again see the schooner?

Answer. I never saw her again.

Question. When did you rejoin the yawl?

Answer. Next morning.

Question. Do you remember the schooner *Rebecca* being detained?

Answer. I was put on board a vessel, and, with the rest of the crew, carried her to St. John's. I believe her name was *Rebecca*, but am not certain.

Question. Do you remember when this vessel was detained?

Answer. I do not exactly recollect, but believe it to be a week or more after rejoining the yawl.

Question. What quantity of wood and water had she on board?

Answer. I believe there was then a half hogshead three parts full, and a considerable quantity of wood.

Question. How was the weather?

Answer. Quite fine and clear, with moderate breezes.

Question. Do you know the position of the fishing ground?

Answer. I do not.

John Cammish, (*S.*,) *examined.*

Question. Were you in the yawl when Mr. Jones detained the American schooner *Rebecca?*

Answer. Yes.

Question. Relate all you know about her.

Answer. The first time I saw her she was at anchor in a small harbor in the Grand Menan; and when we made after her, she got under way, and we chased her, keeping her in sight, till about 11 p. m., when we lost sight of her on the Nova Scotia shore.

Question. Did you see her again afterwards?

Answer. Yes, about three days afterwards.

Question. Relate where she was then, and what she was doing.

Answer. She was lying in a small harbor, about four or five miles from Gull Cove, cleaning her fish.

Question. What quantity of wood and water had she on board?

Answer. She had plenty of both when we detained her.

Question. Do you know the quantity in casks?

Answer. Two and a half hogsheads.

Question. How was the weather when you boarded her?

Answer. Fine weather, with a little breeze.

Question. Do you know how the wind was?

Answer. I am not positive, but believe it was from the northwest.

Richard Newland, (*S.*,) *examined.*

Question. Were you in the yawl when Mr. Jones seized the American schooner *Rebecca?*

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Answer. Yes, I was.

Question. Relate the circumstances.

Answer. She came in and anchored while we were lying in the Grand Menan, when, going to board her, she got under way and made sail; we chased her across the Bay of Fundy, over to the Nova Scotia shore, where we lost sight of her about 11 p. m. Three days afterwards we again saw her at anchor near Beal's Passage, cleaning her fish and heaving the gurry overboard. We boarded her and took her to Gull Cove.

Question. What distance was she from the land when she was taken possession of?

Answer. About a quarter of a mile.

Question. Did you hear Mr. Jones ask what they were doing there?

Answer. Yes, and said they came in for water.

Question. What quantity of wood and water had they on board?

Answer. About two barrels and a half of water, and about a cord or a cord and a half of wood.

Question. How was the weather when you boarded her?

Answer. Fine, clear weather, with little breezes.

Question. Do you remember if it was a fair wind for the fishing ground?

Answer. Yes, it was.

William Vickery, marine, examined.

Question. Were you in the yawl when Mr. Jones seized the American schooner *Rebecca*?

Answer. Yes, I was.

Question. Relate what you remember respecting her.

Answer. On boarding an English schooner, at or near Gull Cove, we saw another laying there; while going on board observed another getting under way, and made sail; we chased her across the Bay of Fundy, and lost sight of her between 9 and 10 o'clock p. m.

Question. When did you again see the schooner?

Answer. About three or four days afterwards, at anchor within Gull Cove, within half a mile of land, cleaning fish; Mr. Jones boarded her and took possession of her.

Question. Did Mr. Jones ask what they were doing there?

Answer. Yes, he did, and they said they came for wood and water.

Question. What quantity of wood and water had they on board?

Answer. I believe, about a barrel and a half of water, and about a cord and a half of wood.

Question. How did you know it was the *Rebecca*?

Answer. I was informed by one of the crew that it was the same vessel we chased across the bay, and that they would have hove to, but did not know we were in chase of them; and that the captain said had he not returned, but made the best of his way home, he should not have been taken.

Question. Did you fire at her to bring her to?

Answer. Yes; I was ordered by Mr. Jones to fire across her bows, and I fired several times.

Question. How was the weather when you detained her?

Answer. Fine weather, with a nice breeze.

Question. Do you know if it was a fair wind to the fishing ground?

Answer. No, I do not.

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John Lloyd, (S.,) examined.

Question. Were you in the yawl with Mr. Jones when he seized the American schooner *Rebecca?*

Answer. Yes, I was.

Question. Relate what you know of the circumstances.

Answer: When lying in Gull Cove, I heard two or three men, who I believe were fishermen belonging to the island of Grand Menan, say that the schooner we had chased across the Bay of Fundy, two or three days before, was then at anchor between two islands, about a mile and a half around the point. We boarded her and detained her. She was then cleaning fish.

Question. Did you hear Mr. Jones ask what they were doing there?

Answer. Yes, they said they came in for wood, water, and to land their gurry.

Question. What quantity of wood and water had they on board?

Answer. They had as much wood as would last them for a fortnight, and a full cask of water on deck, and some below, but cannot say how much, besides beer.

Question. How was the weather when you detained her?

Answer. It was fine weather, with a moderate breeze.

John Cheese, (S.,) examined.

Question. Were you in the yawl when Mr. Jones detained the American schooner *Rebecca?*

Answer. Yes, I was.

Question. Relate what you recollect relative to the detention of her.

Answer. We were lying alongside a wharf in a harbour in the Menan, and observed two schooners at anchor under the land. We went out and boarded an English schooner, on board of which was a man belonging to the *Rebecca*, acting as pilot; while on board the schooner got under way and ran across the Bay of Fundy. We gave chase to her, and fired several shots across her bows to bring her to; at about half past 10 o'clock p. m. lost sight of her; on the fourth day afterwards we again fell in with her at anchor in a narrow passage in the Menan, boarded her and found them cleaning their fish, and throwing the gurry overboard. Mr. Jones asked what they were doing there; they said they had come in for wood and water.

Question. What quantity of wood and water had they on board?

Answer. Two quarter casks full on deck and some in the hold, but do not know the quantity, and had about a cord and a half of wood.

Question. How was the weather when you detained her?

Answer. Fine weather and a light breeze.

Question. Do you know if the wind was fair for going to the fishing ground?

Answer. Yes, it was.

We, the undersigned, have examined the aforesaid persons, belonging to his Majesty's sloop, *Dotterel*, taking the minutes of their depositions respecting the detention of the American fishing schooner *Rebecca;* and we do declare that their evidence has been taken in a

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very impartial manner, and the persons aforesaid have not been biased in any way whatever.

JOHN COOKE,
Senior Lieutenant of his Majesty sloop Dotterel.
JAMES AZZARD,
Purser of his Majesty's sloop Dotterel.
RICHARD HOARE,
Commander.

[Sub-inclosure 5.]

EVIDENCE OF MR. TOUZEAU, MIDSHIPMAN, AND THE CREW OF THE YAWL BOAT BELONGING TO HIS MAJESTY'S SLOOP DOTTEREL, RELATIVE TO THE DETENTION OF THE AMERICAN FISHING SCHOONER "WILLIAM."

Mr. Touzeau, midshipman, examined relative to the detention of the American schooner "William."

Question. Were you in the yawl when Mr. Jones detained the American schooner "*William?*"

Answer. Yes.

Question. State the particulars.

Answer. Mr. Jones sent me with James Lloyd, marine, on a point of land to look out; we saw two or three vessels working up; observed one of them anchor in the Gull Cove. Mr. Jones went out in the small boat to board her; he hailed us to come alongside in the yawl, which we did, and found Mr. Jones had detained her. We then took their fish knives from them, having heard by some people, both on shore and on board some English vessels, that they would oppose us in boarding. We unbent her sails and took them with us in the yawl; also her boat.

Question. Do you know Mr. Jones' reason for taking her boat?

Answer. Yes; to prevent her crew going on shore to exchange fish for rum, knowing that another American fishing vessel had done the like with Mr. Fowler, at Gull Cove, the same day; also, to prevent their getting water, as the American fishermen generally make that a pretext for coming in.

Question. What quantity of wood and water had she on board?

Answer. I cannot say the exact quantity, but there was sufficient for her crew and ours to carry her to St. Andrew's, at which place we did not arrive till several days after her detention.

Question. How was the weather?

Answer. Very fine, with a moderate breeze; but after she anchored it came on foggy.

Thomas Richardson examined.

Question. Were you in the yawl with Mr. Jones when he detained the American schooner "*William?*"

Answer. Yes.

Question. Relate all you know respecting her.

Answer. I went with Mr. Jones in the small boat to board her; went below and overhauled what quantity of wood and water she had on board.

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Question. What quantity of wood and water had she?
Answer. About sixty gallons of water below and thirty on deck, and about a cord and a half of wood.
Question. How was the weather?
Answer. The weather was moderate and hazy, but after she anchored it came on foggy.

James Lloyd, marine, examined.

Question. Were you in the yawl when Mr. Jones detained the American schooner "*William?*"
Answer. I cannot recollect the vessel's name, having detained several.

Felix Shaw, marine, examined.

Question. Were you in the yawl when Mr. Jones detained the American schooner "*William?*"
Answer. Yes.
Question. Relate the circumstances you know about her.
Answer. I cannot recollect any of the particulars, as we detained several.

John Cammish, seaman, examined.

Question. Were you in the yawl when Mr. Jones detained the American schooner "*William?*"
Answer. Yes.
Question. Relate what you know of the circumstances.
Answer. It is so long since I cannot recollect the particulars.

Richard Newland, seaman, examined.

Question. Were you in the yawl with Mr. Jones when he detained the American schooner "*William?*"
Answer. Yes.
Question. Relate what you know respecting her detention.
Answer. When we fell in with the "*William*" she was lying in Gull Cove. Mr. Jones asked what they were doing there. They said they came in for wood and water. Mr. Jones detained her, unbent her sails, and took them with us on shore in the yawl, and likewise took their small boat with us.
Question. Do you know the reason why Mr. Jones unbent her sails?
Answer. To prevent her, I believe, from going to sea during the night.
Question. What quantity of wood and water had she on board?
Answer. About three barrels of water and a cord of wood.
Question. How was the weather?
Answer. Fine weather, with a light breeze.
Question. Do you know the position of the fishing ground?
Answer. I do not know the bearing of it by compass, but I could see the vessels at anchor on the fishing ground.
Question. Was the wind fair for going on it?
Answer. Yes, it was.
Question. Were you in the small boat when Mr. Jones boarded her?

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Answer. Yes, I was.

Question. Did you hear the master of the vessel assign any reason for coming in there?

Answer. He said they came in for wood and water.

William Vickery, marine, examined.

Question. Were you in the yawl when Mr. Jones detained the American schooner *William?*

Answer. Yes, I was.

Question. Relate what you know respecting her detention.

Answer. I observed a schooner come in and anchor within a mile of the shore. Mr. Jones went out to board her, and brought her in the cove and anchored.

Question. Were you on board the schooner?

Answer. Yes.

Question. What quantity of wood and water had she on board?

Answer. I know there was two barrels, but cannot say whether there was any more; was not down in the hold, and cannot say what wood there was.

Question. How do you know it was the *William?*

Answer. I saw the "*William, of Addison,*" on her stern.

John Lloyd, seaman, examined.

Question. Were you in the yawl when Mr. Jones detained the American schooner *William?*

Answer. Yes, I was.

Question. Relate the particulars.

Answer. I was, with the greater part of the crew, encamped on a point of land; observed a schooner come in and anchor. She was boarded, but cannot recollect whether it was by Mr. Jones or Mr. Touzeau.

Question. Were you on board the schooner?

Answer. Yes, I was. I went off and assisted in unbending her sails.

Question. Do you remember what quantity of wood and water she had on board?

Answer. I do not perfectly recollect the quantity, but there was one cask handed up half full, which they said they were going to get filled on shore, but were prevented by Mr. Jones.

Question. Did you hear any of the crew say their reason for coming in?

Answer. Yes, for wood and water.

Question. How was the weather?

Answer. Fine weather and a fresh breeze.

John Cheese, seaman, examined.

Question. Were you in the yawl with Mr. Jones when he detained the American schooner *William?*

Answer. Yes, I was.

Question. Relate all you know about her.

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Answer. I was sick in a tent on shore, and do not know any of the particulars.

William Payne, marine, examined.

Question. Were you in the yawl with Mr. Jones when he detained the American schooner *William?*

Answer. Yes.

Question. Relate all you know of the particulars.

Answer. I went on board with Mr. Jones, in the small boat, to examine her. Mr. Jones detained her, unbent her sails and took them on shore.

Question. Do you know what wood and water she had on board?

Answer. I cannot say.

Question. Did you drink any of the water on board of her?

Answer. Yes, I did.

Question. How was the weather?

Answer. Fine, with a strong breeze.

We, the undersigned, have examined the aforesaid persons, belonging to his Majesty's sloop *Dotterel*, taken the minutes of their depositions respecting the detention of the American fishing schooner *William;* and we do declare that their evidence has been taken in a very impartial manner, and that the persons aforesaid have not been biased in any way whatsoever.

JOHN COOKE,
Senior Lieutenant of his Majesty's sloop Dotterel.
JAS. AZZARD,
Purser of his Majesty's sloop Dotterel.

[Sub-inclosure 6.]

EVIDENCE OF MR. TOUZEAU, MIDSHIPMAN, AND THE CREW OF THE YAWL BOAT BELONGING TO HIS MAJESTY'S SLOOP DOTTEREL, RELATIVE TO THE DETENTION OF THE AMERICAN FISHING SCHOONER GALEON.

Mr. Touzeau examined.

Question. Were you in the yawl when Mr. Jones detained the American schooner *Galeon?*

Answer. Yes, I was.

Question. Relate the particulars respecting her detention?

Answer. While at Gull Cove, Mr. Jones went out one evening in a small boat to cruise. About 11 p. m. Mr. Jones returned with an American schooner which he had detained. Next morning, about 8 o'clock, Mr. Jones sent me on board the *Galeon* to take charge of her; about 9 o'clock we got under way, and made sail for St. Andrew's.

Question. Do you know Mr. Jones' reason for detaining her?

Answer. I believe for their having broken the treaty; but do not know the particulars, as I was left on shore in charge of the yawl.

Question. How was the weather?

Answer. I believe it was a fine clear night.

Question. What quantity of wood and water had she on board?

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Answer. I cannot state the quantity; but we used from it for some days after her detention.

Question. How was the wind?

Answer. From the northward, and I think north by west.

Thomas Richardson examined.

Question. Were you in the yawl with Mr. Jones when he detained the American schooner *Galeon*?

Answer. Yes.

Question. Relate what you know respecting her detention.

Answer. I went in a small boat with Mr. Jones, and pulled out of Gull Cove; boarded two English schooners, who informed us that an American schooner was lying under the land, which vessel we boarded, and found the crew below asleep. Mr. Jones asked them what they came in for; their reply was, for wood and water, and that they had got it that afternoon. Mr. Jones then asked them their reason for not going away; they said they were waiting for wind and tide. We then got her under way, and ran her to Gull Cove, which place lay between us and the fishing ground.

Question. Do you know the position of the fishing ground?

Answer. Yes; I could see it from Gull Cove.

Question. Was the wind fair for the *Galeon* to proceed to the banks?

Answer. Yes, it was.

Question. Do you know the passage from Gull Cove to the fishing banks?

Answer. Yes; a clear passage outside the Black Kedge towards the banks.

Question. What kind of weather was it?

Answer. Very fine and clear, with moderate breezes.

Question. What quantity of wood and water had the *Galeon* on board?

Answer. I do not know the quantity; but observed three or four casks, and a quantity of wood.

William Payne, marine, examined.

Question. Were you in the yawl with Mr. Jones when he detained the American schooner *Galeon*?

Answer. Yes.

Question. Relate the particulars respecting her detention.

Answer. I went with Mr. Jones in a small boat in the afternoon, (the day of the month I do not remember) and boarded an English schooner, where we were informed an American fishing schooner was lying under the land. We boarded her, and found the crew all below; Mr. Jones asked them their reason for being there; they replied, they came in for wood and water. He then asked them why they did not go away when they had got it. They said they were going at daylight. We detained the schooner, and took her to Gull Cove, and on the following morning got under way for St. Andrew's.

Question. Do you know the position of the fishing banks?

Answer. Yes; I could see the vessel on the banks.

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Question. Was the wind fair for the *Galeon* to proceed to the banks?

Answer. Yes; for the banks lie nearly in a line with Gull Cove, from where we detained the *Galeon*.

Question. On what quarter was the wind when you ran towards Gull Cove?

Answer. Very near before the wind; we came close to the Cove, and then we hauled up into the Cove.

Question. How was the weather?

Answer. Fine, clear weather, and fresh breezes.

Question. What quantity of wood and water had the *Galeon* on board when detained?

Answer. She had two casks of water on deck, and a great quantity of wood.

Felix Shaw, marine, examined.

Question. Were you in the yawl with Mr. Jones when he detained the American schooner *Galeon*?

Answer. Yes.

Question. Relate the particulars.

Answer. I was one of the crew of the small boat that went out with Mr. Jones in the afternoon, (the day of the month I do not recollect;) boarded an English schooner near Gull Cove, who said that we had better keep a good lookout, or we should get a good handspiking from the American schooner then lying in shore. We shortly after boarded the American schooner *Galeon*. Mr. Jones asked them what they were doing there. They said they came in for wood and water, and had got it that afternoon. Mr. Jones asked them if they had their wood and water, why they had not gone to sea. Their reply was, they did not think it worth while to go to sea that night, and the master requested Mr. Jones to let him go that time, and he would not come in again. We then got under way, and took her to Gull Cove for that night. One of the crew was very abusive. We afterwards carried her to St. Andrew's.

Question. Do you know the position of the fishing grounds?

Answer. No, I do not.

Question. How was the wind when you ran for Gull Cove?

Answer. A fair wind, and fine, clear weather.

John Lloyd, seaman, examined.

Question. Were you in the yawl with Mr. Jones when he detained the American schooner *Galeon*?

Answer. Yes.

Question. Relate the particulars respecting her detention.

Answer. When at Gull Cove we observed a schooner run in and anchor. We boarded her in the small boat, which proved to be English. They told us that the *Galeon*, American fishing schooner, was lying at an anchorage then about three or four miles off. We then left the English schooner and boarded the *Galeon*. I was left as boat keeper, and cannot state what passed on board. Shortly after she was got under way and ran to Gull Cove. One of the crew of the

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Galeon was very abusive to us. She was afterwards taken to St. Andrew's by Mr. Jones.

Question. Do you know the position of the fishing ground?

Answer. No, I do not.

Question. How was the wind for Gull Cove?

Answer. A fair wind.

Question. How was the weather?

Answer. Fine, clear weather.

Question. What quantity of wood and water had the *Galeon* on board?

Answer. I do not know.

James Lloyd, marine, examined.

Question. Were you in the yawl with Mr. Jones when he detained the American schooner *Galeon*?

Answer. I was in the yawl when he detained some American fishing schooners, but cannot recollect their names.

John Cammish, seaman, examined.

Question. Were you in the yawl with Mr. Jones when he detained the American schooner *Galeon*?

Answer. Yes.

Question. Relate what you know respecting her.

Answer. It is so long since that I cannot recollect any particulars.

Richard Newland, seaman, examined.

Question. Were you in the yawl with Mr. Jones when he detained the American schooner *Galeon*?

Answer. Yes.

Question. Relate what you know respecting her detention.

Answer. I was left in a tent on shore at Gull Cove, and recollect Mr. Jones going out in a small boat and bringing the *Galeon* into Gull Cove.

Question. How was the weather?

Answer. Fine weather, with a light breeze.

Question. Did you go in the *Galeon* to St. Andrew's?

Answer. Yes.

Question. Do you know what quantity of wood and water she had on board?

Answer. She had four casks of water, and about two cords of wood.

John Cheese, seaman, examined.

Question. Were you in the yawl with Mr. Jones when he detained the American schooner *Galeon*?

Answer. Yes.

Question. Relate all you know respecting her detention.

Answer. I cannot state the particulars, as I was in a tent sick on shore.

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William Vickery, marine, examined.

Question. Were you in the yawl with Mr. Jones when he detained the American schooner *Galeon?*

Answer. Yes.

Question. Relate what you know respecting her detention.

Answer. I was left on shore in the tent; Mr. Jones went out in the small boat, and brought in the *Galeon* in the evening.

Question. How was the weather.

Answer. Fine weather.

Question. Were you one of the crew that took the *Galeon* to St. Andrew's?

Answer. Yes.

Question. What quantity of wood and water had she on board?

Answer. Two casks of water on deck and one in the hold, and plenty of wood.

We, the undersigned, have examined the aforesaid persons, belonging to his Majesty's sloop *Dotterel*, taking the minutes of their depositions respecting the detention of the American fishing schooner *Galeon;* and we do declare that their evidence has been taken in a very impartial manner, and that they have not been biased in any way whatever.

JOHN COOKE,
Senior Lieut. of his Majesty's sloop Dotterel.
JAS. AZZARD,
Purser of his Majesty's sloop Dotterel.
RICHARD HOARE,
Commander.

[Sub-inclosure 7.]

EVIDENCE OF THE CREW OF THE DOTTEREL'S TENDER, RELATIVE TO THE DETENTION OF THE AMERICAN FISHING SCHOONERS HERO AND PILGRIM.

William Payne, marine, examined.

Question. Were you in the *Dotterel's* tender with Mr. S. R. Protheroe when he detained the American fishing schooners *Hero* and *Pilgrim?*

Answer. Yes.

Question. Relate the particulars respecting their detention.

Answer. I first saw the *Pilgrim* about two miles from the land, fishing; made the best of our way to close her, and boarded her, having live fish on her deck. Mr. Protheroe asked them what business they had to fish in our waters. They replied they thought it was not in our waters. Mr. Protheroe then said, "I shall detain you and take you to St. John's." I was directed by Mr. Protheroe to take charge of the *Pilgrim*, with another seaman, and to follow him; I afterwards observed the tender board another schooner, which proved to be the *Hero.*

Question. What distance was the *Hero* from the land when Mr. Protheroe boarded her?

Answer. About two miles.

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Question. State what followed after leaving the *Menan.*

Answer. We anchored in Beaver harbor with the *Hero* and tender, and afterwards proceeded the same day and anchored in Mason's Bay. Late one evening Mr. Protheroe sent us our evening's grog, and my having the middle watch I went below and laid down on the lockers to sleep. In the middle of the night I was awoke by the motion of the vessel and endeavored to get on deck, but could not, as the companion hatch was secured down against me. I then forced it open and went on deck, and found the vessel under way in the possession of the Americans. The seaman with me refusing his assistance, I was obliged to submit, and forcibly carried to Lubec, where they allowed me to go on shore. From thence I made the best of my way to St. John's and rejoined the *Dotterel.*

Question. Did you at any time hear Mr. Protheroe make use of any abusive language to the Americans?

Answer. No.

Question. Did you hear or know that Mr. Protheroe at any time compelled the Americans to assist in working the vessel?

Answer. No; but they did assist of their own free will.

John Donovan, seaman, examined.

Question. Were you in the *Dotterel's* tender with Mr. Protheroe when he detained the American schooners *Hero* and *Pilgrim?*

Answer. Yes.

Question. Relate all the particulars you know relative to their detention?

Answer. We fell in with the *Pilgrim* while running into the *Menans.* I think she was about a mile and a half from the land; saw them hauling up fish, and, on boarding her, found live fish on her deck Mr. Protheroe said he should detain her for fishing in our waters. We sent two men on board her to take charge. We then made sail for another schooner, which proved to be the *Hero.* When we boarded her she was about a mile and a half from the land, with lines overboard, fishing, and had live fish in the hold. Mr. Protheroe asked them what they had been doing close in shore with their sails down. A man named Wilson said they had been cleaning fish on shore. I was sent on board the *Hero,* with another man, to take charge, and to follow the tender and *Pilgrim,* which we did, anchoring each night till our arrival in Mason's Bay, at which place the *Pilgrim* made her escape in the night. We afterwards proceeded, anchoring each night, till we arrived at St. John's.

Question. What quantity of wood and water had the *Hero* on board?

Answer. Two casks of water and some wood; the quantity I cannot say.

Question. Did you at any time hear Mr. Protheroe make use of any abusive language towards the Americans?

Answer. No, I did not.

Question. Did Mr. Protheroe compel any Americans to work?

Answer. No, not to my knowledge; but they continued assisting the working of the vessel with their own free will.

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Thomas Cassady, seaman, examined.

Question. Were you in the *Dotterel's* tender with Mr. Protheroe when he detained the American schooners *Hero* and *Pilgrim*?

Answer. Yes.

Question. Relate all the particulars?

Answer. We were running in for the *Menan* and boarded the *Pilgrim*, American schooner, about a mile or a mile and a quarter from the land, fishing. Mr. Protheroe asked what business they had fishing there, as they were within three miles of the land. The answer was, they did not know they were within the limits. Mr. Protheroe detained her, and put two men on board to take charge, and we proceeded to board another schooner, which proved to be the *Hero*, about two miles from the land.

Question. Did you hear Mr. Protheroe ask the master of the *Hero* if he could assign any reason for being so near the land with her sails down?

Answer. Yes, but did not hear the reply.

Question. What became of the *Hero*?

Answer. Mr. Protheroe sent two men on board her to take charge, and we proceeded to Mason's Bay, anchoring each night in the tender, with the *Hero* and *Pilgrim* in company, at which place the *Pilgrim* made her escape in the night. Afterwards we proceeded to St. John's in the tender, with the *Hero*, where she was delivered over to the customs.

Question. Did you at any time hear Mr. Protheroe use any abusive language to the Americans?

Answer. No, I did not.

Question. Did Mr. Protheroe compel the Americans in the tender to work?

Answer. No, he did not, but they sometimes voluntarily assisted in working the tender.

Question. Did you, at any time, know Mr. Protheroe to put the Americans on one meal a day, or know them to fare worse than the tender's crew?

Answer. No, we all messed alike, having the allowance of the British Navy, excepting spirits, for part of the time, which was all used, and I know Mr. Protheroe to have frequently given them rum from his own private stock.

Thomas Russel, seaman, examined.

Question. Were you in the *Dotterel's* tender with Mr. Protheroe when he detained the American schooners *Hero* and *Pilgrim*?

Answer. Yes.

Question. Relate the particulars.

Answer. In running from Grand Passage to Grand Menan, observed two schooners lying at anchor, one of which got under way and stood in shore. We made the best of our way to close her. I observed her with lines overboard, fishing. We then boarded her, which proved to be the *Pilgrim*, American fishing schooner. She had at the time live fish on her deck. Mr. Protheroe detained her, and put two hands on board to take charge, she then being within a mile of the shore. Observed another schooner make sail from in

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shore, from the northward; stood for her, fired, brought to, and boarded the American fishing schooner *Hero*. Mr. Protheroe then asked the master what they had been doing in shore; a man named Wilson said, we have been on shore cleaning fish. Mr. Protheroe detained her. On our way to St. John's anchored under the Eastern Wolves; as we were going in, observed two schooners about a mile off us. Mr. Protheroe hailed the *Pilgrim* for her boat, which was brought to us in the tender by a boy, who requested Mr. Protheroe to be allowed to pull him on board the aforesaid schooners. Mr. Protheroe, with a man and the boy, proceeded to board these vessels. We then, with the *Hero* and *Pilgrim* in company, proceeded for St. John's, anchoring each night till we arrived in Mason's Bay, where the *Pilgrim* effected her escape during the night. Afterwards we proceeded in the tender, *Hero* in company, to St. John's, where the *Hero* was delivered up to the custom-house.

Question. Did you, at any time, hear Mr. Protheroe make use of abusive language to the Americans?

Answer. No.

Question. Did you, at any time, hear Mr. Protheroe threaten to ill-use or maltreat the Americans on board the tender?

Answer. No, I did not.

Question. Did Mr. Protheroe compel the Americans to work in the tender?

Answer. No, but they did sometimes assist voluntarily.

Question. Did you, at any time, know Mr. Protheroe to put the Americans on one meal a day, or know them to fare worse than the tender's crew?

Answer. No. Mr. Protheroe never interfered about the prisoners, and we all messed alike, having the established allowance of the British Navy, excepting spirits for part of the time, which had been all used; and I know Mr. Protheroe to have frequently given them rum from his own private stock.

Samuel Goodanew, marine, examined.

Question. Were you in the *Dotterel's* tender with Mr. Protheroe when he detained the American schooners *Hero* and *Pilgrim*?

Answer. Yes.

Question. Relate all the particulars respecting their detention.

Answer. In standing over from Grand Passage to Grand Menan, observed two schooners at anchor, one of which got under way and stood in shore; made the best of our way and boarded the *Pilgrim* about two miles from the land, to the best of my judgment. I did not go on board of her, but she was detained by Mr. Protheroe, and two hands put on board to take charge. We then made sail and boarded the *Hero*, then about a mile and a half from the shore. Mr. Protheroe inquired what they had been doing in shore with their sails down. A man by the name of Wilson said, they had been on shore cleaning their fish. Mr. Protheroe detained her, and put two hands on board to take charge. Proceeded, anchoring each night, to the Eastern Wolves. In going in, observed two schooners about two miles from us; took the *Pilgrim's* small boat and boarded them. Mr. Protheroe, myself, and the American boy, who [we] brought on board the boat, who was allowed to go by his own request. We then

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proceeded to Mason's Bay, anchoring each night, with the *Hero* and *Pilgrim* in company, at which place the *Pilgrim* got away during the night. We afterwards proceeded to St. John's, with the *Hero* in company, which vessel was delivered to the custom-house at that place.

Question. Did you, at any time, hear Mr. Protheroe make use of any abusive language to the Americans?

Answer. No, I did not. I must have heard it had it taken place, as I never left the tender.

Question. Did Mr. Protheroe compel the Americans in the tender to work?

Answer. No, they sometimes assisted with their own consent.

Question. Did you, at any time, hear Mr. Protheroe threaten to ill-use or maltreat the Americans on board the tender?

Answer. No, I did not, but must have heard it had it happened.

Question. Did you, at any time, know Mr. Protheroe to put the Americans on one meal a day, or to fare worse than the tender's crew?

Answer. No. We messed all alike, having the established allowance of the British Navy, excepting spirits, which we drank during the bad weather. I know Mr. Protheroe to have given them spirits from his own stock. I was the person who attended Mr. Protheroe, and gave the spirits to them myself, by his direction.

John Wake, mariner, examined.

Question. Were you in the Dotterel's tender when Mr. Protheroe detained the American schooners *Hero* and *Pilgrim*?

Answer. Yes, I was.

Question. Relate all the particulars respecting their detention.

Answer. In running from Grand Passage to the Grand Menan, observed two schooners lying at anchor; one of which got under way and stood in shore, which vessel was chased; observed her fishing and hauling live fish in; boarded her, which proved to be the American schooner *Pilgrim*. She had, at the time, live fish on her deck. Mr. Protheroe detained her, and put on board two hands to take charge of her, she then being about two miles from the shore, to the best of my judgment. We then chased another schooner which had made sail in from shore; boarded her, then about a mile and a half from the land; proved to be the *Hero*, American fishing schooner. Mr. Protheroe asked them what they were doing in shore; a man by the name of Wilson said they had been on shore cleaning their fish. Mr. Protheroe detained her, and put two hands on board in charge of her. We then proceeded with the schooner to Mason's Bay, anchoring each night, when the *Pilgrim* made her escape in the night. We then proceeded to St. John's in the tender, with the *Hero* in company, at which place she was delivered over to the custom-house.

Question. Did you, at any time, hear Mr. Protheroe make use of any abusive language to the Americans on board the tender?

Answer. No, I did not.

Question. Did Mr. Protheroe compel the Americans in the tender to work?

Answer. No, he did not; they helped to work the tender by their own accord.

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Question. Did you know Mr. Protheroe ill-use or maltreat the Americans on board the tender?

Answer. No.

Question. Did you know him put the Americans on one meal a day, or fare worse than the tender's crew?

Answer. No, they ate and drank with us. We had the established allowance of the British Navy, except spirits, part of the time, which had been used during the bad weather. I recollect, once, Mr. Protheroe giving them a part from his own private stock.

John Cole, seaman, examined.

Question. Were you in the *Dotterel's* tender with Mr. Protheroe when he detained the American schooners *Hero* and *Pilgrim?*

Answer. Yes.

Question. Relate all the particulars you know respecting their detention?

Answer. When running from Grand Passage to the Grand Menan, observed a schooner about two miles from the land, fishing. We boarded her, which proved to be the *Pilgrim*, American fishing schooner. I saw live fish on her deck. Mr. Protheroe detained her, and put two hands on board to take charge of her. We then made sail and boarded another schooner, the *Hero*. Mr. Protheroe detained her also.

Question. Do you know what Mr. Protheroe detained her for?

Answer. No, I do not. I did not hear any questions put, as I was getting my clothes to go on board the *Hero*. We then made sail, in company with the tender and *Pilgrim*, and proceeded to Mason's Bay, at which place the *Pilgrim* effected her escape during the night. We afterwards went to St. John's, with the tender and *Hero* in company, at which place the *Hero* was delivered over to the custom-house.

We, the undersigned, have examined the aforesaid persons, belonging to his Majesty's sloop *Dotterel*, taking the minutes of their depositions respecting the detention of the American fishing schooners *Hero* and *Pilgrim;* and we declare that their evidence has been taken in a very impartial manner, and the persons aforesaid have not been biased in any way whatever.

JOHN COOKE,
Senior Lieutenant, his Majesty's sloop Dotterel.
JAMES AZZARD,
Purser.
RICHARD HOARE,
Commander.

[Sub-inclosure 8.]

EVIDENCE OF MR. TOUZEAU, MIDSHIPMAN, AND THE CREW OF THE YAWL BOAT BELONGING TO HIS MAJESTY'S SLOOP DOTTEREL, RELATIVE TO THE DETENTION OF THE AMERICAN FISHING SCHOONERS "REINDEER" AND "RUBY."

Mr. Touzeau examined.

Question. Were you in the yawl with Mr. Jones when he detained the American schooners *Reindeer* and *Ruby?*

Answer. Yes.

Question. Relate all the particulars relative to their detention?

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Answer. I recollect, while in Gull Cove, of having received information, on a Sunday, from some men and a Mr. Franklin that several American fishing vessels were at anchor in Whitehead harbor, and that they anchored there the evening before; that, on their anchoring, one of them fired three muskets, and said they were armed and manned, and would oppose our boarding them. I acquainted Mr. Jones of the information I had received, who went immediately in the small boat to cruise, and returned in the evening. He told me that he had boarded an English fishing schooner (*Industry*) near Whitehead, who gave him information that several American schooners were at anchor at Two Island harbor, and that they got their wood and water at Whitehead; they fired several muskets on their anchoring, and told the crew of the *Industry* they would not allow a man-of-war's boat to board them; and, after they completed their wood and water, they shifted to Two Island harbor. We got under way the yawl about 9 o'clock in the evening, and went towards Two Island harbor, and anchored about 2 o'clock in the morning. At daylight we observed several vessels at anchor at Two Island harbor, and shortly after got under way, when we chased them; observed three of them lashed together, and all the crews collected on board the middle one. We ordered them to separate, which at first they refused to do, until Mr. Jones threatened to fire on them. They dropped clear of each other; we boarded them, and detained the American schooners *Reindeer* and *Ruby*. Mr. Jones asked the masters of the other two American shallops if they were willing to take the crews of the *Reindeer* and *Ruby* on board for a passage home. They answered they were willing to do so. Mr. Jones gave them as much provisions as they chose to take, and put them on board, with the exception of the masters. About 8 o'clock we made sail, Mr. Jones in the *Reindeer* and myself in the *Ruby*, for St. Andrew's. While beating up through East Quoddy, about 6 p. m., when abreast the harbor Delute, observed two schooners coming down towards us, full of armed men and wearing American colors, one of them making towards me, and the other to Mr. Jones. The one abreast of me ran alongside and boarded, with about forty-five men with pistols, swords, and muskets, and fixed bayonets. When they got on board they took possession of the *Ruby*, and took the arms from my crew. One of the men, with his musket and fixed bayonet, made a thrust at one of my men, named James Lloyd, (marine,) but Mr. Howard, leader of their party, parried the thrust off. The man again attempted to knock the marine down with the butt end of his musket, which Mr. Howard again parried off, and ordered him not to use violence against any of my men, as he had got possession of the vessel, and which was all they wanted. They then fired off all their muskets and pistols, which were loaded. I observed the other schooner fire off muskets likewise; then I asked for the arms of my crew, which they gave me. We then shoved off, and left them. After we had left, and rejoined the yawl, they fired several volleys of musketry on board both schooners all the way to Eastport.

Question. What quantity of wood and water had the *Ruby* on board?

Answer. There were two casks with water on deck; but cannot say whether there was any below, nor can I say what quantity of wood there was on board.

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Question. How was the wind?
Answer. A moderate breeze from northwest.
Question. How was the weather?
Answer. Fine, clear weather till we had possession of the schooners, and then it came on foggy, and cleared off again in the afternoon.

Thomas Richardson, seaman, examined.

Question. Were you in the yawl with Mr. Jones when he detained the American schooners *Reindeer* and *Ruby?*
Answer. Yes.
Question. Relate what you know respecting their detention.
Answer. I remember going in the small boat with Mr. Jones. After pulling some time we launched the boat over a bar, about half a mile broad, between two islands, and afterwards we boarded an English fishing schooner. The crew informed us that the schooners at anchor off Two Island harbor were American fishing vessels, and had, the night before, fired two guns and defied any man-of-war's boat boarding them, and advised us not to attempt to board them in the small boat we were then in. We then returned to Gull Cove, and that night, with the whole of the crew in the yawl, pulled during the whole of that night, and at daylight we were within three miles from four schooners, at anchor, a little more than a mile from shore. We observed them get under way, and three of them lashed alongside each other. Mr. Jones then desired them to separate, which they did not do for some time, when Mr. Jones threatened to fire on them. They then separated, and dropped astern of each other and anchored. We then boarded them, and took possession of the *Reindeer* and *Ruby*, and the crews, as I understood, with their own consent, went on board of two other vessels. We then got the *Reindeer* and *Ruby* under way, and made sail for St. Andrew's. When in East Quoddy, two schooners came towards us, fired a gun, and hoisted American colors; observed one of the schooners take possession of the *Ruby*, and the other came close to us and desired us to heave to. I was at the helm when they fired at us, and the shot came close to me and Mr. Jones. There was but one musket on board us, which Payne (a marine) wanted to fire, but Mr. Jones desired him not. I observed the American schooner's deck full of armed men, with muskets, pistols, and carbines. After they fired at us, Mr. Jones gave up the papers to the master of the *Reindeer*, who held them up in his hand to the Americans, and desired them not to fire, as he had possession of the vessel. We then went in the yawl for St. Andrew's. Some of the Americans would insist on taking the yawl with them. I observed them fire volleys of muskets till after they had anchored the *Reindeer* and *Ruby* in Eastport.
Question. How was the weather when Mr. Jones detained the *Reindeer* and *Ruby?*
Answer. It was clear weather till after they were detained, when it became foggy.
Question. Do you know what quantity of wood and water the *Reindeer* had on board?
Answer. The quantity I cannot recollect, but we used from both.

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James Lloyd, marine, examined.

Question. Were you in the yawl with Mr. Jones when he detained the American schooners *Reindeer* and *Ruby?*

Answer. Yes.

Question. Relate the particulars respecting their detention.

Answer. I remember a man, at Gull Cove, giving information of some schooners (American); the particulars I do not know. We got under way that evening in the yawl, and pulled all night; after daylight we got close to four schooners, and observed three of them lashed alongside of each other, and the crews of these vessels on board the large one in the centre. Mr. Jones ordered them to separate several times, and at length he said he would fire into them; they were very abusive to us; after a considerable time they separated and we boarded them. Mr. Jones then sent me below to see if there were any fire-arms on board the *Reindeer;* I found a musket, with a double charge and primed, and two powder horns full of powder, and about twelve or fourteen pistol balls. Mr. Jones detained two of them, with the consent of the masters of the other two vessels and the crew of the two detained; they were allowed to go on board and take what provisions they pleased; the masters of the vessels came on board and took green fish, pork, tea, and butter, molasses, flour, and bread. I was sent, with Mr. Touzeau, on board one of them, and got under way in company with the one Mr. Jones was on board of; and, in the afternoon of the same day, while beating up to St. Andrew's, abreast of Campo Bello, I observed three schooners and two boats; one of the schooners went towards Mr. Jones and fired several muskets; went below to get my dinner, when Mr. Touzeau called us up to our arms, and asked me if my musket was loaded; I told him it was and primed; he told me he thought they were American armed vessels coming to take us. I then asked Mr. Touzeau if I should fire; he said not till he gave me the orders. They came nearly alongside of us, and ordered us to heave to; they presented their muskets, with fixed bayonets, at us, and said, damn your eyes, if you don't heave to we will fire into you. They sung out to the man at the helm if he did not put the helm down and lower the peak they would shoot him dead on the spot. They then came alongside and boarded us, I think about forty men in number, all with muskets and fixed bayonets except one, for our deck was full of armed men. They told me to deliver up my arms or they would run me through; damn your eyes said one; and another said I will blow your brains out. I replied, I am a King's man, and will not deliver up my arms; their leader drew his sword and had a brace of pistols; desired the Americans not to hurt any of us; at that time a man made a thrust at me with fixed bayonet, which their leader parried off; the same man again made a blow at me with the butt end of his musket, which their leader again parried off; then their leader told me that I had better give up my arms, and he would be answerable for them, which I did; about this time they fired volleys of musketry. We then went on board of our boat and observed them continue to fire as they were returning to Eastport.

Question. What kind of weather was it when Mr. Jones detained the *Reindeer* and *Ruby?*

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Answer. Fine weather, with a light breeze, but came foggy after.

Question. Do you know what quantity of wood and water was in the schooner you were on board of?

Answer. Two casks and a half of water and about a cord of wood.

John Cammish, seaman, examined.

Question. Were you in the yawl with Mr. Jones when he detained the American schooners *Reindeer* and *Ruby*?

Answer. I was.

Question. Relate the particulars.

Answer. I recollect Mr. Jones going out from Gull Cove in the small boat and returned in the evening. I heard him say that he had information of some American schooners. We were ordered to get our things in the yawl from the tent, and went out that evening. We pulled the greater part of the night, and anchored for about an hour and a half. At daylight observed five vessels lying at anchor. When they saw us they got under way. When we came near them one of the vessels dropped her anchor, and two others lashed alongside her; and the crews of these vessels went on board the centre one with their fish spears. Mr. Jones desired them to separate, which they did not do for a considerable time, until Mr. Jones threatened several times to fire into them; they separated, and we boarded the *Reindeer*, where I remained. Mr. Jones detained her and another vessel. By the wish of the crews of these vessels, and by the consent of the masters of the other two vessels, they were sent on board, with as much provisions as they wished. The masters of the two vessels not detained came on board us in their own boats, and took the crews, with as much provision as they chose, on board. We then got under way; the *Reindeer* for St. Andrew's, the *Ruby* in company. In the afternoon of the same day observed two armed vessels. One of them came towards us and gave three cheers and hoisted American colors; they called to us to heave to, and threatened to fire into us. Her decks were full of armed men, with muskets and fixed bayonets; there was also in company a large armed boat. The schooner fired two musket balls across our deck, and then Mr. Jones gave up the papers to the master of the *Reindeer*, who held them up in his hand and called to the Americans not to fire, as he had possession of the vessel. The American schooner was then about half pistol shot from us. We were then ordered into the yawl by Mr. Jones, and observed them, in going to Eastport, fire volleys of musketry.

Question. What quantity of wood and water had the *Reindeer*?

Answer. Three barrels of water and a great deal of wood.

Question. What weather was it when the two vessels were detained?

Answer. Fine weather and light winds from northward and westward.

Richard Newland, seaman, examined.

Question. Were you in the yawl with Mr. Jones when he detained the American schooners *Reindeer* and *Ruby*?

Answer. Yes, I was.

Question. Relate the particulars.

Answer. I recollect a man coming to Mr. Jones, at the tent at Gull Cove, and informing him that some American fishing schooners had

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come into an anchorage not far from us, and fired their muskets, and said they would not allow any man-of-war's boat to board them. They got their wood and water there, and got under way and ran to Two Island harbor; laid there one day and a night. I was left on shore in the tent, and remember Mr. Jones going out in a small boat with four hands, and returned the same afternoon. We got under way that evening in the yawl, and stood for Two Island harbor. The next morning we fell in with four American schooners and one English. When I first saw them they were at anchor, about half a mile from the land, in Two Island harbor. After they saw us they got under way. On our chasing them, we fired to bring them to; but instead of complying, three of them ran alongside each other and lashed together. When we came close to them, Mr. Jones desired them to separate and bring up. They refused to do so, and would not allow us to board, until Mr. Jones repeatedly threatened to fire into them; they dropped clear of each other; we then boarded the *Reindeer*, and Mr. Jones asked what they were doing there? They said they came in to land their gurry and offal of the fish, and get wood and water. Mr. Jones told them they had time enough to get their wood and water at White island. Mr. Jones detained the *Reindeer*, and then boarded the *Ruby*, which vessel he detained also; and I was sent below in the *Ruby* to search for arms; found none; but found a frying-pan full of hot lead and a spoon in it, and some musket balls quite warm. I asked the master of the *Ruby* where his arms were? He said he had none, except one fowling-piece. I then asked him where it was. His reply was, he could not say, unless his boy had lost it or stowed it away in the salt room. When I asked their reason for lashing together and running the musket balls, they said they intended to keep us off; with their five-and-thirty men and eight muskets they would easily have done so. I then asked them where their eight muskets were? They answered, they had eight muskets. The masters of the two schooners which were not detained came on board the *Ruby* and took their crew, with their clothes, and as much provisions as they wished for a passage to their home, by their own wish, and sanction of Mr. Jones. Afterwards we got under way in the *Reindeer* and *Ruby* for St. Andrew's; and the same afternoon, between Indian island and Campo Bello, two schooners came towards us full of armed men. The one abreast of the *Ruby* gave three cheers and hoisted American colors, bore down and ordered us to heave to, which we refused doing until they threatened to fire into us. They came alongside, and boarded with muskets and fixed bayonets, cutlasses and pistols. I do not know the number of men, but our decks were full. They took our arms from us and discharged their own. We then were ordered into our boat, and I observed them firing volleys of musketry going in, and after they had anchored at Eastport.

Question. Did you search the salt room of the *Ruby* for arms?

Answer. No; I had not time.

Question. How was the weather when the *Reindeer* and *Ruby* were detained?

Answer. Fine, clear weather, with a little breeze, but came on foggy afterwards for two hours.

Question. How was the wind?

Answer. I cannot recollect.

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William Vickery, marine, examined.

Question. Were you in yawl with Mr. Jones when he detained the American schooners *Reindeer* and *Ruby*?

Answer. Yes.

Question. Relate all the particulars you know respecting their detention?

Answer. I recollect going out in the small boat from Gull Cove with Mr. Jones, and, after pulling for a short time, we launched the boat over a bar between two islands, and boarded an English fishing schooner. The crew informed us that two American schooners had anchored the night before, not far from where we laid, and that they fired their muskets and defied any man-of-war's boat to board them. The crew of the English schooner told us that we had better be well armed, as the Americans were prepared for us. We returned to Gull Cove, and in the evening went out with all the crew in the yawl; we pulled till about 4 o'clock in the morning. At daylight observed some schooners at anchor, which vessels, shortly afterwards, got under way; and as we went down towards them, I fired, by the direction of Mr. Jones, to bring them to. As we closed the vessels, three of them lashed alongside each other, and put their crews on board the middle one. Mr. Jones desired them to cast off from each other, which they refused to do for some time, until he threatened to fire into them, when they separated, and we boarded the *Reindeer;* and Lloyd, a marine, was sent down to search for arms; he found one musket, loaded. Mr. Jones asked the master where the arms were that he saw. He said he had none. Mr. Jones then detained the *Reindeer* and *Ruby;* and by the wish of the crews of the vessels, with the exception of the masters, they were put on board the other two Americans not detained, with the consent of the masters, taking with them as much provisions as they chose. We then got under way in the *Reindeer*, with the *Ruby* in company. In the afternoon of the same day, when abreast of Campo Bello, I saw two schooners, one of which came towards us, fired a gun, and hoisted American colors, and ordered us to heave to, which we refused to do; and after we tacked they fired across our deck. After this, Mr. Jones delivered up the papers to the master of the *Reindeer*, who held them up to the Americans, and desired them not to fire. We were then ordered by Mr. Jones into the yawl, and I observed them fire several muskets at a time, and the balls falling into the water, as they were going into Eastport.

Question. What arms had the Americans?

Answer. I observed some men with cross-belts, bright muskets, and fixed bayonets; others with muskets, swords, and pistols.

Question. What quantity of wood and water had the *Reindeer* on board?

Answer. A cask full below, some on deck, and plenty of wood.

Question. How was the weather when the *Reindeer* and *Ruby* were detained?

Answer. Fine weather, with fine breezes.

Question. How was the wind?

Answer. I do not recollect.

Question. Did you search the salt room on board the *Reindeer* for arms?

Answer. No, I did not.

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John Lloyd, seaman, examined.

Question. Were you in the yawl with Mr. Jones when he detained the American schooners *Reindeer* and *Ruby*?

Answer. Yes.

Question. Relate the particulars.

Answer. I went out with Mr. Jones from Gull Cove in a small boat, and, after pulling for some time, we launched the boat over a bar about a quarter of a mile broad, between Two islands, and boarded an English schooner (*Industry*) of Grand Menan, and I heard the master inform Mr. Jones that some American fishing schooners had been in there on the last Saturday, and discharged three guns, and that several were now lying in a bay further on, when Mr. Jones proposed to go after them in the small boat. The master of the *Industry* advised not to do so, as they were well manned. We returned to Gull Cove the same day, and in the evening went out with all the arms in the yawl, and at daylight next morning observed five schooners getting under way; we ran down to them and fired; observed three of them made fast to each other, the largest of them in the middle, with the crews collected on board of her. Mr. Jones ordered them to separate, which they hesitated to do for some time, and they appeared to be consulting together. After Mr. Jones threatened to fire into them they separated. We boarded two of them, the *Reindeer* and *Ruby*, and the crews of these vessels, with the exception of the masters, went on board the two schooners not detained, with as much provisions as they pleased; after this we got under way in the *Ruby*, and *Reindeer* in company, for St. Andrew's. On the afternoon of the same day, when abreast of harbor Delute, observed two schooners coming down from Eastport, full of men; one of them came towards us, and all hands hailing us to heave to, or they would fire into us; they ran alongside and boarded us with about 30 or 40 men, with muskets and bayonets; as they were shearing up alongside, some of them sung out to fire at the officers, and fire at the man at the helm; they had their muskets levelled at us, when their leader, a young man, came among them and said, don't fire at all, and parried their muskets off. They took our arms from us and drove us forward. I saw a scuffle between James Lloyd, a marine, and one of the Americans who wanted to take his arms from him. Mr. Touzeau told us to get into our boat, and I observed them firing volleys of musketry and cheering on their way to Eastport; also observed firing on shore at Eastport.

Question. What quantity of wood and water had the *Ruby* on board when detained?

Answer. Two or three casks, with plenty of wood.

Question. How was the weather?

Answer. Very fine, with light breezes.

William Payne, marine, examined.

Question. Were you in the yawl with Mr. Jones when he detained the American schooners *Reindeer* and *Ruby*?

Answer. Yes, I was.

Question. Relate the particulars respecting her detention.

Answer. I recollect on Sunday going out from Gull Cove, with Mr. Jones, in a small boat, and, after pulling for some time, hauled the

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boat over a bar; shortly after boarded an English fishing schooner belonging to Grand Menan; the crew gave us information that some American schooners anchored there on Saturday night, fired their guns, and said that they did not care for any man-of-war's boat whatever, as they were as well armed as the men-of-war's boats. I saw the schooners at Two Island harbor, at anchor, when on board the *Industry;* and her crew said we had better not go to them in the small boat; that it was their determination to kill us. We then returned to Gull Cove, and in the evening of the same day got under way in the yawl, with all the crew, and proceeded to Two Island harbor. About daylight next morning observed them get under way; we closed them, and fired to bring them to. I then saw them closing together, and three of them lashed alongside each other; we ordered them to separate, which they seemed not willing to do. Mr. Jones threatened to fire into them; we had our muskets, two in number, pointed to the vessel; after being threatened several times, two of them, the *Reindeer* and *Ruby*, Mr. Jones asked them what brought them there; their answer was, they came for wood and water; Mr. Jones then said, when you had got it, what was their reason for not going away; their reply was, the breeze was so light they could not get out; the crews of their vessels, with the exception of the masters, by their own request, went on board the two other schooners not detained, and were allowed to take what quantity of provisions they thought proper. I then went below, with Thomas Richardson, to search for arms, by the direction of Mr. Jones; found a musket, loaded, in the cabin. Mr. Jones asked the master what became of their arms; he said they were below; we then went again below for the same purpose. Mr. Jones again asked the master of the *Reindeer* what became of the arms; his answer was, that they must have been hove overboard; he said we had got them yesterday killing ducks. Shortly after we got the *Reindeer* and *Ruby* under way, and proceeded for St. Andrew's; in the afternoon of the same day, when abreast of Campo Bello, saw a schooner coming down and ran close alongside the *Ruby*, hoisted American colors; observed another standing towards us in the *Reindeer;* they gave three cheers, hoisted American colors, and hailed us to drop the peak of the mainsail; the master of the *Reindeer* said to us, you had better not fire on them, as they will kill every man of you, and he ran below; they came near us, and Mr. Jones said, come alongside of us, which they were willing to do. I had my musket ready to fire, and asked Mr. Jones if I should do so, to which he objected, and said, let them come alongside first; they then fired, and a ball passed close to us. Mr. Jones gave the papers up to the master of the *Reindeer*, who held them up to those on board the American schooner, desired them not to fire, and said that we would quit the vessel as soon as possible. We then got into the yawl, and observed them firing different times going into Eastport.

Question. When the schooner with American colors flying came close, did you observe they were armed?

Answer. Yes, they were, and the deck full of men, armed with muskets and fixed bayonets, carbines, blunderbusses, pistols, and swords.

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Question. How was the weather when the *Reindeer* and *Ruby* were detained?

Answer. Fine weather and a fine breeze.

Question. What quantity of wood and water had the *Reindeer* on board?

Answer. Two casks of water on deck and plenty of wood.

Question. Did you search the salt room and the hold for arms?

Answer. No; I did not search the salt room aft, but did forward.

John Cheese, seaman, examined.

Question. Were you with Mr. Jones, in the yawl, when he detained the American schooners *Reindeer* and *Ruby?*

Answer. No, I was not; I was one of his boat's crew, but was left behind at St. Andrew's.

We, the undersigned, have examined the aforesaid persons, belonging to his Majesty's sloop *Dotterel*, taking the minutes of their depositions respecting the detention of the American fishing schooners *Reindeer* and *Ruby;* and we do declare that their evidence has been taken in a very impartial manner, and that the persons aforesaid have not been biased in any way whatever.

JOHN COOKE,
Senior Lieutenant, &c.,
JAMES AZZARD,
Purser,
RICHARD HOARE,
Commander, His Majesty's sloop Dotterel.

Admiral Sir Isaac Coffin to Mr. King.

[Magdalen Islands.]

LONDON, PALL MALL, 123.
2d. February 1826.

SIR: By the treaty of 1783 between this country and the United States of America, Permission was given to the Fishermen of the latter country to dry and cure their Fish on the Magdalen Islands, with leave of the Proprietor or Possessor of the Ground, when settled.

By the late Convention between this country and North America regarding the Fisheries, the Magdalen Islands are excluded.

As Proprietor of the said Islands, I have no objection to the renewal of the Privilege granted in 1783 to the American Fishermen provided you may think it an object to apply to this government for an order in council for that purpose, and that it is stated the agreement must be made with the Proprietor of the Islands.

I have the honor to be Sir Your humble servant

ISAAC COFFIN, *Admiral.*

RUFUS KING, Esqe. &c., &c., &c.

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PERIOD FROM 1836 TO 1854.

Mr. Bankhead to Mr. Forsyth.

WASHINGTON, *January 6, 1836.*

The undersigned, his Britannic Majesty's charge d'affaires, has the honor to transmit to the Secretary of State of the United States the copy of a letter which he has received from the Earl of Gosford, his Majesty's governor-in-chief of Canada, enclosing letters from the officers of the customs at Quebec and Gaspé, in which serious complaints are preferred against fishermen of the United States, for encroaching on the limits of the British fisheries carried on in the river and gulf of St. Lawrence.

These encroachments have occasioned great injury to the British merchants and others engaged in connection with these pursuits, and moreover, they are entirely at variance with the restrictions imposed by the convention which was concluded in the year 1818, for regulating the fisheries carried on by the two nations.

The undersigned begs leave to call Mr. Forsyth's attention to the repeated acts of irregularity committed by the fishermen of the United States, detailed in the letter from the sub-collector of customs of Gaspé, and he confidently hopes that measures will be taken to prevent their recurrence and do away with the possibility of collision taking place on the spot, which might arise should those fishermen persist in encroaching upon forbidden ground.

The undersigned avails himself of this opportunity to renew to Mr. Forsyth the assurance of his most distinguished consideration.

CHARLES BANKHEAD.

The Hon. JOHN FORSYTH, &c., &c., &c.

[Inclosure.]

Lord Gosford to Mr. Bankhead.

CASTLE OF ST. LEWIS,
Quebec, December 26, 1835.

SIR: Having received complaints of encroachments by the fishermen of the United States, on the limits of the British fisheries carried on in the river and Gulf of St. Lawrence, and of the injury thereby occasioned to the merchants and others engaged in that pursuit, I conceive it to be my duty to transmit for your information the enclosed copies of communications made to me by the officers of the customs here and at Gaspe upon this subject.

I beg leave, at the same time, to observe that I have forwarded similar copies to his Majesty's vice admiral commanding on this station.

I have the honor, &c.,

GOSFORD.

CHARLES BANKHEAD, ESQ., &c., &c., &c.

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[Sub-inclosure 1.]

Collector and Comptroller of Customs to Lord Gosford.

CUSTOMS,
Quebec, November 9, 1835.

MAY IT PLEASE YOUR EXCELLENCY: We have the honor to transmit for your excellency's information, a copy of a letter just received from the sub-collector of this department at Gaspe, with reference to certain complaints made against the United States fishermen for encroachment on the limits and otherwise injuring the British fisheries carried on in the Gulf of St. Lawrence, in order that your excellency may take such measures therein as the circumstances of the case may appear to your excellency to require.

We have the honor, &c.

HY. JESSOPP, *Collector.*
CHARLES G. STEWART, *Comptroller.*

His Excellency EARL OF GOSFORD,
Commander-in-chief, &c., &c., &c.

[Sub-inclosure 2.]

The sub-collector of customs at Gaspe to the collector and comptroller at Quebec.

CUSTOM HOUSE,
Gaspe, September 12, 1835.

GENTLEMEN: I beg leave to acquaint you that for several years past numerous complaints have been made by those who carry on the fisheries on the shores of the river and gulf of the St. Lawrence, against American fishermen who frequent the fishing banks, for having from time to time encroached their limits, to the serious injury and prejudice of the British merchants or "planters," who have much capital involved in that precarious pursuit.

The circumstance of immense numbers of United States fishing smacks forming a line and ranging themselves on the banks where the codfish chiefly resort, has been often referred to as a principal cause why the fisheries have visibly retrograded, inasmuch as the *waste* is thrown overboard in the process of curing, deterring the fish from seeking food at their former summer resorts; but as the convention made in 1818, and ratified by the statute 59 George III., chapter 38, secures to the republican government of the United States certain privileges and limits, our merchants have suffered the obstruction without complaint.

The United States fishermen have not, however, remained content with the great indulgences afforded them by the treaty, but under numerous pretexts, approach our shores in direct violation of its restrictions; and, for several years past, have had the temerity to take bait even on our beaches. But in order to elucidate and convey some idea in what manner their infringements can so materially affect the success of our fishermen, it may be desirable to explain, in brief terms, the nature of the process itself, as practised here.

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At the commencement of the fishing, early in May, an abundant supply of caplin and herring are obtained for bait, and when the influx of these ceases, mackerel make their appearance, and our fishermen, by putting out nets and moorings have, until lately, been amply supplied with that fish as a substitute to bait their hooks. But the United States fishermen having adopted a new system of mackerel fishing, by feeding them under their vessels, (large schooners at one hundred tons, and frequently fifteen to twenty men) not only take immense quantities, but by their proximity to the shores entertain the fish from being taken in nets; and it has now become a universal practice with them to intrude wherever they please, without reference to any given law or restriction; and I have detected, with various success, several of their vessels under such circumstances.

On a recent voyage in the custom-house boat, down the bay of Gaspe, I met three large schooners fishing for mackerel between the shores and the fishing barges, not two miles from land, and remonstrated with the master of one (the *Bethel*, of Provincetown.) They were all in the act of fishing, and although I advised the said master to go off, he declined doing so, offering nothing in vindication but scurrilous contempt, and my means were inadequate to enforce any measures of redress.

As each succeeding year renders the foregoing evils more manifest, coupled with reiterated complaints by the merchants engaged in the trade here, and carrying on fishing, I have considered it my duty respectfully to draw your attention to the case, begging, in behalf of our enterprising settlers, that you will be pleased to lay the same before vice-admiral the commander-in-chief, at Halifax.

For several years after my appointment to this survey, we were favored with at least annual visits of his Majesty's cruisers, and particularly during the commands of Admirals Griffith, and Sir Charles Ogle, and a knowledge of this presence or vicinity was a salutary and efficient protection to the Gaspe fisheries, but for some time past scarce any ship of war has called here.

It is unnecessary to remark that the harbor of Gaspé, a harbor which may rank almost first in his Majesty's dominions, affords safe and convenient anchorage, easy of access, and capable of entertaining any ship of his Majesty's navy; and if the commander-in-chief would be pleased to direct a cruizer to be stationed during the summer months between Point Misco and the entrance of the river St. Lawrence, or so far as the island of Anticosti, including Gaspe bay, our fisheries would be very materially benefited, and a deserving community protected in their pursuits.

In offering the foregoing imperfect detail, I do so as a duty devolving on me in my public capacity, with a hope that I may be excused, and under a conviction that the vice-admiral commander-in-chief, will be pleased to take the case into his high consideration. All of which is most respectfully submitted to him.

I have, &c.

D. McConnell, *Sub-Collector.*

The Collector and Comptroller,
Of his Majesty's Customs, Quebec.

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Mr. Forsyth to Mr. Bankhead.

DEPARTMENT OF STATE,
Washington, January 18, 1836.

The undersigned, Secretary of State of the United States, has the honor to acknowledge the note addressed to him on the 6th instant, by Mr. Bankhead, charge d'affaires of his Britannic Majesty, with its enclosures complaining of encroachments by the fishermen of the United States on the limits secured, by the convention of 1818, exclusively to British fishermen. Though the complaint thus preferred speaks of these encroachments as having been made from time to time, only one is specifically stated, viz; that of the schooner *Bethel*, of Provincetown. But the President, desirous of avoiding just ground of complaint on the part of the British government on this subject, and preventing the injury which might result to American fishermen from trespassing on the acknowledged British fishing grounds, has, without waiting for an examination of the general complaint, or into that respecting the *Bethel*, directed the Secretary of the Treasury to instruct the collectors to inform the masters, owners, and others engaged in the fisheries, that complaints have been made, and to enjoin upon those persons a strict observance of the limits assigned for taking, drying, and curing fish by the American fishermen, under the convention of 1818.

The undersigned avails himself of this opportunity to offer to Mr. Bankhead the renewed assurance of his high consideration.

JOHN FORSYTH.

CHARLES BANKHEAD, Esq., &c., &c., &c.

Circular instructions to officers of the customs residing in collection districts where vessels are licensed for employment in the fisheries of the United States. . . .

TREASURY DEPARTMENT, *January 21, 1836.*

Representations have been made to our government through the chargé d'affaires of his Britannic Majesty, of encroachments by the American fishermen upon the fishing-grounds secured exclusively to British fishermen by the convention between the United States and Great Britain, bearing date the 20th day of October, 1818.

The President, being desirous of avoiding any just cause of dissatisfaction on the part of the British government on this subject, and with a view of preventing the injury which might result to the American fishermen from trespassing upon the acknowledged British fishing-grounds, directs that you will inform the masters, owners, and others employed in the fisheries in your district, of the foregoing complaints; and that they be enjoined to observe strictly the limits assigned for taking, drying, and curing fish, by the fishermen of the United States, under the convention before stated.

In order that persons engaged in the fisheries may be furnished with the necessary information, the first article of the convention,

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containing the provisions upon this subject, is annexed to this circular.

LEVI WOODBURY,
Secretary of the Treasury.

To the collector of—

P. S. The collectors of Portland, Penobscot, Bath, Boston, Portsmouth, Gloucester and Newport are directed to publish these instructions twice a week for one month in each of the newspapers published at their respective ports, and charge the expenses as incidental to the collection of the revenue.

Mr. Bankhead to Mr. Forsyth.

WASHINGTON, *January 19, 1836.*

The undersigned, his Britannic Majesty's charge d'affaires, has the honor to acknowledge the receipt of Mr. Forsyth's note of yesterday's date.

The undersigned cannot resist expressing to the Secretary of State his high sense of the prompt manner in which the President has been pleased to instruct the collectors of customs to enjoin upon the masters and others engaged in the American fisheries strictly to observe the limits assigned to them by the convention of 1818. It is a new proof of the friendly feeling entertained by the President towards the British government—a feeling fully reciprocated on their part.

The undersigned has the honor to renew to Mr. Forsyth the assurance of his distinguished consideration.

CHARLES BANKHEAD.

The Honorable JOHN FORSYTH, &c., &c., &c.

Consul Morrow to Mr. Forsyth.

No. 41. CONSULATE OF THE UNITED STATES OF AMERICA,
Halifax, N. S., Feby. 28, 1837.

SIR: An Act was passed by the Legislature of this Province in March, 1836, Chapter Eight, Page eleven of the Copy of the Acts of this Province passed in that session and herewith transmitted, entitled "An Act relating to the Fisheries, and for the prevention of Illicit Trade in the Province of Nova Scotia and the Coasts and Harhours thereof;" the said Act however not to go into force until His Majesty's assent should be signified thereto: that assent has lately been given and the Law is in force.

The provisions of the said Act appear to me exceedingly rigid, but especially the eighth and following sections, and as American vessels alone are likely to come under the influence of this law, and as I anticipate much trouble from its operation I think it my duty to submit it to the consideration of Government.

I have the honor to be Sir, Your humble servant

JNO. MORROW.

The Honble. JOHN FORSYTH,
Secretary of State, Washington.

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Lord Glenelg to Sir Colin Campbell.

No. 187. DOWNING STREET, *5th November, 1838.*

SIR: I have the honor to acknowledge your Despatch, No. 16, of the 26th March last, transmitting a joint Address to the Queen, from the Legislative Council and House of Assembly of Nova Scotia, complaining of the habitual violation by American Citizens of the treaty subsisting between Great-Britain and the United States, on the subject of the Fisheries, and praying for additional Naval protection to British interests.

In obedience to Her Majesty's commands, this subject has engaged the serious attention of Her Majesty's Government, and it has been determined for the future, to station, during the Fishing Season, an armed Force on the Coast of Nova Scotia, to enforce a more strict observance of the provisions of the Treaty by American Citizens; and Her Majesty's Minister at Washington has been instructed to invite the friendly co-operation of the American Government for that purpose.

The necessary directions having been conveyed to the Lords Commissioners of the Admiralty, their Lordships have issued orders to the Naval Commander in Chief on the West Indian and North American Station, to detach, so soon as the Fishing season shall commence, a small Vessel to the Coast of Nova Scotia, and another to Prince Edward Island, to protect the Fisheries. The Commander of these Vessels will be cautioned to take care that, while supporting the rights of British Subjects, they do not themselves overstep the bounds of the Treaty. You will of course afford them every information and assistance which they may require for the correct execution of this duty. I trust that these measures will prove satisfactory to the Legislature of Nova Scotia.

I have the honor to be, &c.

(Signed) GLENELG.

Lieutenant-General Sir COLIN CAMPBELL, &c., &c., &c.

Consul Morrow to Mr. Forsyth.

(No. 74.) CONSULATE OF THE UNITED STATES OF AMERICA.
Halifax, Nova Scotia, February 28, 1839.

SIR: I have the honor to inform you that the schooners "*Hero*," of Eastport, Harvey, master, and "*Combine*," of Boston, Kennison, master, have been seized and condemned in the court of vice-admiralty for an alleged violation of the several treaties on the subject of the fisheries. The decree for condemnation passed on the 28th of January, but no sale has taken place.

The case of the "*Hero*" was not brought before my notice, but the owner and master of the "*Combine*" applied to me, as consul; but the case was clear against the vessel, upon her master's own admissions, taken upon oath. And as the seizure was made at the Gut of Canso, which Mr. Primrose claims to be within his jurisdiction, alleging that his commission is "for the port of Pictou, and for all other ports and

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places that may be nearer to Pictou than the residence of any other consul," under these circumstances, I declined putting in any defence, acquainting the owner with my determination, which had been formed after submitting the case to counsel.

I have the honor to be, sir, your obedient, humble servant,

JNO. MORROW.

Hon. JOHN FORSYTH,
Secretary of State, Washington.

Consul Primrose to Mr. Forsyth.

CONSULATE OF THE UNITED STATES,
Pictou, 11th March, 1839.

The Honorable JOHN FORSYTH,
Secretary of State, Washington.

SIR: I have to acknowledge the receipt of your letters of the 1st January and 2nd February; the latter granting me leave of absence until the first of April, but, as the season is now so far advanced, I have determined to postpone my intended journey for the present.

You have no doubt been informed, by the Consul at Halifax, of the seizure of several fishing vessels of the United States, on the Coasts of this Province, during the past year for alleged infringement of the convention of 1818; one of which vessels at least, if not more than one, has recently been condemned in the Court of Vice Admiralty at Halifax.

Numerous complaints have been made by the inhabitants of this Province, alleging that the fishermen of the United States frequently violate the terms of that Treaty by following the fish too close to the coasts of Nova Scotia & Prince Edwards Island, and using the harbours thereof for other purposes than are enumerated in the convention.

The British Government has decided to send out two armed vessels in the Spring, to be stationed during the fishing season on these coasts, for the purpose of preventing any infringement of the Treaty; and although I am well aware that *much* of the outcry which has been made on this subject has had its origin in the disappointed feelings of Nova Scotia fishermen, on seeing themselves so far outstripped, in the successful pursuit of so valuable a branch of their superior perseverance and skill of their enterprising neighbours; yet I know that, within my consular district, a tempting shoal of fish is sometimes, either from ignorance or the excitement of the moment, followed across the prescribed limits; and I suppose that, during the ensuing season, the greatest vigilance will be displayed in looking after offenders.

I have thought it my duty to communicate these facts to you, in case it should be deemed requisite, in order to prevent fishermen from becoming unconsciously liable to confiscation, that some instructions should be issued to Collectors of Customs likely to grant licences to fishermen, directing them to request the fishermen to make themselves well acquainted with the terms of the treaty, as they may expect a strict enforcement of its provisions, during the ensuing season;

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or to enable you to provide such other remedy as the case seems to demand.

The Port of George Town in Prince Edwards Island has been declared a "Free Port" for Foreign vessels, but I do not see that it can for many years possess a trade of any importance. It is at present very extensively used as a Port of Shelter by U. States Fishermen, and its being made a "Free Port" affords no greater privileges in that respect than heretofore.

As the Fishermen resort much to George Town, and to the Strait of Canso, I have thought it might be advisable to appoint an Agent at each of these places, but on this point I beg to be favored with your directions.

Have I and the Agents which I appoint power to administer *Oaths*, or merely to take the *declarations* of parties?

In my instructions I am informed that "on subjects relating to duties regarding the revenues, particular instructions will be given by the Treasury" may I request to be favored with these instructions, as I am at a loss for the proper form of Consular Certificates of Invoice.

I am also desirous of being informed whether cargoes of coal require to be accompanied with a certified Invoice, as such document is very seldom called for.

I trust my letter No. 9 enclosing my returns No. 1 has reached your Department. I shall be much assisted in the performance of my duties, if I can be furnished with any of the publications noticed in my letter No. 6.

The desertion of American Seamen at this Port, induced by the high rate of wages given to navigate New Colonial vessels to England, has of late become a serious obstacle to the interests of American shipping.

I shall be assiduous in my endeavours to check this practise as much as possible, but the local authorities in many instances refuse to grant Warrants for the apprehension or confinement of such deserters, alleging that they have no right to interfere with foreigners. This renders it necessary that I should be fully informed what my powers are over Seamen of the U. States in this Port, and I shall look anxiously for your advice on this subject, to enable me to put forth every proper effort, to arrest the progress of an evil of so much magnitude.

I have the Honor to be Sir, Your most obt & Humble Servant

JAMES PRIMROSE.

Consul Morrow to Mr. Forsyth.

(No. 77) CONSULATE OF THE UNITED STATES OF AMERICA,
Halifax, Nova Scotia, June 27, 1839.

SIR: I have to state that a number of American vessels have been seized in this Province for violating, as has been alleged, the convention between the United States and Great Britain, and the law of

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this Province, a copy of which I forwarded in my letters numbered 41 and 63, namely:

Schooner *Shetland*, of Boston, 98 tons burden, seized at Whitehead, near Canso.

Schooner *Magnolia*, of Vinalhaven, seized at Tusket Island harbor, near Yarmouth.

Schooner *Independence*, of Vinalhaven, seized at Tusket Island harbor.

Schooner *Hart*, of Deer Isle.

Schooner *Java*, of Islesborough.

Schooner *Charles*, of Mount Desert, seized at Canso; this vessel has been released.

Also a schooner, name unknown, seized at Guysborough.

Schooner *Mayflower*, of Boothbay, seized and sent into Guysborough.

Schooners *Battelle*, *Hyder Ally*, and *Eliza*, seized at Beaver harbor.

I enclose copies of two letters, which I thought it my duty to write to the Governor, with several statements submitted to him. Also, a copy of an affidavit, made by the master and crew of the schooner *Eliza*, of Portland; and a copy of a letter addressed to me by Sir Rupert D. George, baronet, Secretary of the Province; also, a report made by the Queen's advocate general in the matters referred to the Governor.

You will perceive, from the papers now transmitted, the position in which I am placed; urging the claims of the owners and masters of the vessels, and having the expense of the crews to pay, they being utterly destitute; and I have been compelled to afford them the assistance they required.

I have received information that the revenue-cutter *Hamilton* had arrived at Yarmouth, for the purpose of inquiring into the circumstances of those seizures, and I wished most earnestly to have seen her commander; but it is now said that she has proceeded to St. John's, N. B. And although I have felt the impropriety of my interference in the business of the consulates of St. John's, N. B., Pictou and Sydney, (Yarmouth and the Tuskets being nearer to St. John's than to Halifax—Whitehead and Guysborough being nearer either to Sydney or Pictou,) I could not refuse my assistance to American citizens in distress; and I hope this will pass without censure.

I beg leave, also, to refer to the Journals of the House of Assembly, now transmitted, from which it would appear that the provincial act has been principally framed on the documents therein contained.

Many other vessels will no doubt be seized, and I shall be called upon by the crews of the vessels to intercede for them, and to supply their wants. This I took the liberty of bringing under your notice in my letter No. 62; and I respectfully urge that the labor of protecting the interests of American citizens in this province should not, of necessity, devolve on me, as living near the seat of government, while all the perquisites of office are enjoyed by others within whose consular jurisdiction the seizures have been made.

I have the honor to be, sir, your obedient, humble servant,

JOHN MORROW.

The Hon. JOHN FORSYTH,
Secretary of State, Washington.

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[Inclosure No. 1.]

Consul Morrow to Lieut. Governor Campbell.

CONSULATE OF THE UNITED STATES OF AMERICA.
Halifax, Nova Scotia, June 15, 1839.

SIR: In the interview with which your excellency honored me a few days ago, I took the liberty of expressing my opinion with respect to the recent seizure of several American vessels, in the ports of this Province, by Mr. Darby and Mr. Forrester.

I now beg leave to solicit the attention of your excellency to a statement of facts, so far as they have come to my knowledge, and to bring them plainly before your excellency. I have abstracted from affidavits now in my possession, and which, if necessary, may be submitted to your excellency, all that I think may enable your excellency to form a correct judgment on the cases respectively; which papers are hereunto annexed, and numbered 1 to 6.

I would state to your excellency that Mr. Matthew Forrester declared to me, on the morning of Saturday last, in the presence of several respectable persons, that he gave money to the boy referred to in statement No. 1, (the case of *Shetland*,) to induce the master to sell the articles named in that statement; and, in mentioning this circumstance, I am unwilling to imagine that your excellency will sanction a practice by which individuals, and especially strangers and foreigners, may be entrapped at the instance of officers appointed to carry the laws of the country into effect, and who are interested in the condemnation of property so placed in jeopardy.

I would earnestly request your excellency to consider the cases which I now place before your excellency, and which, I think, do not, under all the circumstances, subject the vessels to forfeiture under the provisions of the convention between Great Britain and the United States.

With respect to the operation of the provincial act, William IV., cap. 8, I would only respectfully refer your excellency to the act itself. I do not presume to express an opinion regarding it; but would only notice the utter impossibility of any defence being offered by a master of these small fishing vessels, even if conscious of his innocence.

In the tenth section of the act it is said, "that no person shall be admitted to enter a claim to anything seized in pursuance of this act, &c., until sufficient security shall be given, &c., in a penalty not exceeding sixty pounds," &c.

Your excellency will please to observe that, under this rule, a claimant must be in a situation to procure funds to employ lawyers, and to pay heavy court expenses under the vice-admiralty table of fees; which cannot be done in any of these cases, as I am informed by professional men, under an advance of at least thirty or forty pounds currency; adding to this the security of sixty pounds, it is evident that the owner of each vessel, so seized must either send on funds or letters of credit to the extent of one hundred pounds, before he can oppose the seizure, or, otherwise the vessel will or may be condemned by default.

This sum is, perhaps, as much as any of these small vessels are worth, and the claimant, if able to pay it, must actually place at hazard the one hundred pounds mentioned, in addition to his property seized;

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and although, perhaps, quite innocent of any offence, must depend upon the proverbial uncertainty of litigation for the recovery of any part of the property or money in such danger.

I would also respectfully urge that I dare not plead for those persons who have actually offended; but, as the organ of certain individuals who may have erred in a slight degree, either from ignorance or from temptation, and violated the provisions of an act of which they may never have heard, I beg, if it be possible, that your excellency will interfere for their relief; and, if it is consistent with truth and justice, to exercise the high powers with which you are invested; and, perhaps, under the advice of her Majesty's council, your excellency may be enabled to extend mercy to such as have not wittingly offended.

In any case in which an apparent and wilful infringement of the convention or of the law has been made, I have no wish to interfere.

I have the honor to be, sir, your excellency's humble servant.

JOHN MORROW.

His Excellency Lieut. Gen. Sir COLIN CAMPBELL, K. C. B.,
Lieutenant-Governor and Commander-in-Chief, &c.

A true copy.

JOHN MORROW.

[Inclosure No. 2.]

Consul Morrow to Lieut. Governor Campbell.

CONSULATE OF THE UNITED STATES OF AMERICA.
Halifax, Nova Scotia, June 18, 1839.

SIR: I have received from Guysborough letters of which I beg leave to annex copies of two, and an extract from one; and I respectfully request that your excellency will be pleased to consider the cases thus submitted.

In addressing your excellency, I am constrained to remark that the port of Guysborough is out of my district, and the case in question should properly have come under the notice of Mr. Primrose, at Pictou, or Mr. D'Wolfe, at Sydney; but, if the statements made to me are to be relied on, I feel it to be my duty, independent of form, to beg that your excellency will be pleased to waive a matter of form, and permit me to urge the claims of a poor and I think injured man.

In doing so, however, I wish to disclaim any interference with the consulates at Pictou or Sydney; but it would appear that the cargo of the vessel seized at Guysborough will perish, and the crew must be ruined, unless prompt measures are adopted for their relief.

If the statements are correct, I am not aware that an officer of the provincial government has a right to inquire whether a vessel of the United States sails under a mackerel or a codfish license. Something I know is necessary to establish the national character of the vessel; but if herring instead of codfish or mackerel are taken, provided those herrings are taken in conformity with the convention, I have most respectfully to urge that Mr. Marshall could not possess a right to seize a vessel under such circumstances, even if the master had erred in fishing at the Magdalen Islands; and that Mr. Marshall

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is only clothed by your excellency with authority to protect the interests of this province, while the Magdalen Islands, where the offence, if any, has been committed, belongs to the province of Lower Canada.

I have copied the letter from the master of the schooner *Charles* verbatim, that no mistake or misapprehension may attach to me.

I have the honor to be, sir, your excellency's humble servant.

JOHN MORROW.

His Ex'cy Lieut. Gen. Sir COLIN CAMPBELL, K. C. B.,
Lieutenant Governor and Commander-in-Chief.

A true copy.
JOHN MORROW.

[Sub-inclosure 1.]

SCHOONER SHETLAND, OF BOSTON, MASSACHUSETTS, G. W. CLARE, MASTER, BURDEN 98 TONS.

This vessel sailed from Boston, on the 20th day of May last, on a fishing voyage to the Labrador coast, victualled and stored for about three months; having no object in view save the procuring of a cargo of fish, not intending to trade, nor having any goods on board for sale when the vessel left Boston, but having a few suits of oil clothing, intended for the crew, as is usual.

After leaving Boston, encountered a succession of easterly winds, and after having been driven about for some time, put into the harbor of Whitehead on the 3d of June, for shelter, and to obtain wood, but were informed that no wood could be had, except soft wood; the mate and two hands then collected a small quantity of wood lying on the shore. At 2 p. m., before the mate went on shore, the schooner drifted, and the small bower chain, of which about thirty fathoms were out, parted about fifteen fathoms from the anchor, let go the best bower anchor, and narrowly escaped being driven on shore. (The declaration of the mate to me, not in the affidavit referred to, is, that the vessel was about her own length from the rocks.) Then carried out the kedge anchor, by way of a second anchor, with a hawser and a coil of large rigging attached to it. At about 4 p. m. recovered the anchor and part of the chain. About 6 a. m. on the following day, got under weigh, and came to in American cove, in Whitehead harbor, to procure wood and place the vessel in safety. That a lad whose name is unknown, came on board the schooner. (Supposed to be about sixteen years of age. This is not in the affidavit.) Requested the master to sell him a pair of trousers, which he (the master) refused to do, but on repeated importunities consented that the young man might select a pair; the boy also requested to have some tea and tobacco, and after much hesitation, the master, having none to spare, and not having either beam, scales, or weights on board, gave him a quantity of tea, supposed to be about one pound, and about six to eight pounds of tobacco; for which articles, namely, the trousers, tea, and tobacco, the boy paid to the master four dollars. About two hours after this transaction, a number of men came on board, headed by a person who was said to be a magistrate or custom-house officer, and demanded the papers of the schooner, (the register, fishing license, and the log-book,) which he retained;

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sent the master and the crew on shore at Whitehead, except the mate; the vessel was then seized, and has been brought to Halifax. It has since been ascertained that the schooner was seized by Mr. Matthew Forrester.

LIST OF ARTICLES SHIPPED ON BOARD OF SAID SCHOONER AT BOSTON, AS NEARLY AS CAN BE ASCERTAINED.

Beef about 1 barrel; port do; tea 28 pounds; tobacco 20 pounds; bread ¾ barrel; flour 1½ do.; meal 3 bushels; rice 20 pounds; chocolate 1 box; gin about 30 gallons; oil skin suits 6, fishing gear 1 seine; (this is called seine—I believe it is a large net,) salt about 36 hhds, in barrels; coffee 25 lbs.; molasses 1⅛ barrel; butter 25 lbs.; potatoes, turnips, and onions, small quantities; empty barrels 305; brooms 1 dozen; oil 3 gallons; candles 10 lbs.; and a box containing tinware, essences &c., value $25., intended for Monsieur Chevalier Revier, Bon Esperance, Labrador.

What quantity of articles remain on board is not exactly known. They neither caught, nor were preparing to take fish on the coast. Were in no harbor from the time of leaving Boston until the said vessel was seized, and had not bought or sold any articles on the coast, save the trousers, tea, and tobacco before mentioned.

A true copy.

JOHN MORROW.

[Sub-inclosure 2.]

CASE OF THE SCHOONER MAGNOLIA, OF VINALHAVEN, STATE OF MAINE. GEORGE POOL, MASTER.

AFFIDAVIT OF GEORGE POOL, MASTER, WILLIAM S. COOMBE, DAVID JOICE, AND SAMUEL CLARKE, SEAMEN.

Left Vinalhaven the 26th April last on a fishing voyage into the Bay of Fundy.

Fished at the distance of forty miles, and never at a less distance than fifteen miles from the coast of Nova Scotia, until about the end of April.

In want of water.

Blowing very heavy.

Followed an English vessel into Tusket Island harbor.

Remained there about twenty hours.

Neither the master nor any of the crew of the schooner took or caught any herring, cod, or other description of fish, within fifteen miles of the coast.

Master admits that he purchased a barrel of herring for bait, but took no fish within fifteen miles of the coast of Nova Scotia.

Remained, as before mentioned, at Tusket island, and returned to the fishing ground not less than fifteen miles from the coast, and there remained until the 25th day of May.

In want of wood and water.

Blowing a gale of wind from the southeast. Returned to the Tusket islands on Saturday, the 25th day of May, having on board forty quintals of fish.

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On Sunday, the 26th day of May, the vessel seized by Mr. Darby, and taken into Yarmouth.

A true copy.

JOHN MORROW.

[Sub-inclosure 3.]

CASE OF THE SCHOONER INDEPENDENCE, OF VINALHAVEN, STATE OF MAINE, 31 TONS.

At Vinalhaven about the 10th April last; fitted for a fishing voyage into the Bay of Fundy.

Sailed on or about the 10th of April; commenced fishing, but never at a less distance than fifteen miles from the coast of Nova Scotia, until the latter end of April last.

In want of water; went into the Tusket Islands, and remained at anchor about twenty hours. At the expiration of that period put to sea, and returned to the fishing-places in the said bay; but not fishing at a less distance from the coast than fifteen miles.

Remained in the bay until the 25th day of May. The only compass on board the vessel having been broken, the master wished to reach Yarmouth to have his compass repaired, and to obtain a supply of water. Blowing a gale of wind, the weather thick and hazy, was compelled to take shelter in Tusket Islands for the night.

On the 26th May, lying at anchor, the schooner was boarded and seized by Mr. Darby, commanding the schooner *Victory*, who demanded all the papers of the said schooner, which were delivered to him.

The vessel taken into Yarmouth; crew ordered to leave the vessel.

Protest made in the usual form.

A true copy:

JOHN MORROW.

[Sub-inclosure 4.]

CASE OF THE SCHOONER HART, J. TURNER MASTER, FROM DEER ISLAND, STATE OF MAINE.

DEPOSITION OF THE MASTER, AND HIRAM RICH AND ALBERT DOUGLAS, AMERICANS RESIDING AT YARMOUTH, AND ROBERT POWER, SEAMAN.

Sailed from Deer Island on a fishing voyage in the Bay of Fundy, and remained there at a distance not at any time less than fifteen miles, until the 30th May last.

Except when compelled by stress of weather, or the want of necessary fuel and water, to put into harbor, and for no other purpose, put into Tusket Islands, and once into the port of Yarmouth.

The master never, at any one time, remained in any harbor or place for a longer period than twenty-four hours; that neither he nor his crew, since her departure from Deer Island, have taken or prepared to take fish of any kind or description with nets, lines, or in any manner, at a distance from the coast less than fifteen miles.

That the said master went into Tusket harbor to procure wood and water and for no other purpose whatever.

That Benjamin Brown, a resident at Yarmouth, while lying in harbor, called to one of the crew of said vessel, requesting that the said master would assist him in clearing or picking his nets;

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and — of the boat *Hart*, in consequence of such request, went on board of Brown's vessel, (a British vessel,) and assisted in clearing his nets; for which service Brown gave to the deponent Rich about two barrels of fresh herrings.

(The master and crew state that they had no need of bait, having abundance of clams on board, which had been brought with them from Deer Island. This, however, not in the affidavit made at Yarmouth.)

That, with the exception of the two barrels of fish, neither the master of the said boat, nor her crew, have fished on any part of the coast of Nova Scotia within fifteen or sixteen miles.

That no article whatever has been sold from or out of the said vessel; but the necessary supply of wood and water were obtained and paid for in money.

That, on the 21st day of May, the boat was boarded and seized by Mr. Darby, of the government schooner *Victory*, and taken into Yarmouth, and all the papers of the said schooner *Hart* were taken from the said master, and himself and crew were sent on shore; Mr. Darby detaining all the clothes and necessaries of the said master and crew, except for clothes they had on at the time of seizure.

THE AFFIDAVIT OF BENJAMIN BROWN, OF YARMOUTH, NOVA SCOTIA, TAKEN BEFORE ——— PARISH, ESQ.

(This affidavit came into my hands on Wednesday, the 11th June, by mail.—J. M.)

That he, Brown, had been engaged in the herring-fishery at the Tusket Islands since 17th of April.

That about the 1st day of May last, the American boat *Hart* was seized by the commander of the schooner *Victory*.

That the said boat *Hart* came to the said island frequently, when, in his belief, shelter was necessary. The boat was always brought to anchor close to deponent's vessel; and verily believes that no herring or other kinds of fish were taken by the crew of said boat within or near to the said islands.

Saith, that when said boat entered the said islands, had her crew attempted to fish or to set nets deponent must have been aware of it, as the said boat always came to anchor close to deponent's vessel.

Deponent saith, that about four weeks since he gave to the master of the said boat, and to one of her crew, named Rich, two and a half barrels of herring as a recompense for assisting him, — (deponent,) at his request, in picking herrings from deponent's nets, and in dressing and salting his fish.

A true copy:

JOHN MORROW.

[Sub-inclosure 5.]

CASE OF THE SCHOONER JAVA, OF ISLESBOROUGH, STATE OF MAINE.

This case has not been reported at the consulate, but a claim has been made for the passage of four seamen to the United States.

A true copy:

JOHN MORROW.

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[Sub-inclosure 6.]

PROVINCE OF NOVA SCOTIA, *Halifax, ss.*

Personally, on this 13th day of June, A. D., 1839, before me, John Morrow, consul of the United States of America for the port of Halifax, in the Province of Nova Scotia, and for all other ports and places that may be nearer to Halifax than the residence of any other consul, came and appeared James Morton, master of the schooner "*Eliza, of Portland,*" which is of the burden of fifty-eight tons or thereabouts, together with the several parties whose names are hereunto subscribed, being the crew of the said schooner, who, being by me duly examined and sworn on the Holy Evangelists of Almighty God, did testify and declare to be true the several matters hereinafter set forth:

That, on or about the twenty-sixth day of April last, these appearers sailed in and with the said schooner from Portland, on an intended fishing voyage on the coast of Nova Scotia and the Bay of St. Lawrence, having on board materials and stores fit and proper for a fishing voyage, and which voyage was expected to last about four months.

That the said schooner carried no articles whatever suitable for a trading voyage or for sale; nor had any one of these appearers any goods, wares, or merchandise wherewith to carry on any trade or traffic; but solely intended and fitted out for the fishery, with nets, hooks and lines, salt, &c.

That from the day on which they sailed, they never caught or cured any fish whatever, within ten or twelve miles of any part of the coast; and never made any harbor, except when unavoidably compelled to do so, viz: on or about the 5th of May, it blowing a heavy gale from the east, they were compelled to make a harbor in the Ragged Islands, where they remained two or three days, during all which period the weather continued so bad as to prevent their going to sea. On the 24th of May, or thereabouts, the schooner having carried one of her larboard main-chains, in consequence of a heavy swell while at anchor in sixty fathoms off Spry Harbor, they were compelled to run into Beaver Harbor as the nearest port and got it repaired by a man whose name they were informed was —— Winsell.

That on the 8th of June now instant, the said schooner put again into Beaver harbor to get wood and water, (their supply being much reduced, and being inadequate for the said voyage,) and on the 9th (being Sunday) the said schooner was seized by the provincial schooner *Victory*, Darby master, and brought to Halifax; the master and the cook being the only persons allowed to stay in her.

And these appearers solemnly declare that they neither sold, bartered, nor parted with any article whatever out of the said schooner, or caught or procured or prepared, or intended to catch or procure any fish whatever, except at a distance of ten to twelve miles from the coast of Nova Scotia; or purchased or endeavored to purchase any fish of any of the inhabitants or others on the British coasts, and that the whole sum of money in possession or control of

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this appearer, the master, did not exceed four to five dollars, or thereabouts, with which to buy wood and water in case of need.

JAMES MORTON
BENJAMIN MORTON
LEWIS (his x mark) HAZEL,
ROBERT MORTON
JAMES W. GRAY
SAMUEL BURNS

Sworn to at Halifax, this 18th day of June, A. D. 1839, before me.

[L. S.] FREDERICK LE BLANC,
Notary Public.

A true copy:
JOHN MORROW.

[Inclosure No. 3.]

Sir Rupert D. George to Consul Morrow.

PROVINCIAL SECRETARY'S OFFICE.
Halifax, June 25, 1839.

SIR: Your letter of the 15th instant, and the several papers which accompanied it, relative to the seizure of certain American fishing vessels, having been referred, by the direction of the Lieutenant Governor, to her Majesty's attorney general, I have it in command from his excellency to transmit to you the enclosed copy of that officer's report, and to state that, under the circumstances therein mentioned, his excellency does not consider it proper to interfere in any of the cases which you have felt it your duty to bring under his excellency's notice.

I have the satisfaction to acquaint you, with reference to your communication of the 18th instant, that, before it was received, the attorney general had sent instructions to Mr. Marshall, the seizing officer at Guysborough, for the release of the schooner *Charles*.

I have the honor to be, sir, your most obedient servant,

RUPERT D. GEORGE.

JOHN MORROW, Esq.

A true copy:
JOHN MORROW.

[Inclosure in foregoing.]

Report of the Advocate General of Nova Scotia.

I have carefully examined the foregoing letter and statements made by Mr. Morrow, the American consul, to his excellency, and submitted to me by his excellency's order, and most respectfully report thereon: That it does not appear to me that his excellency can be called upon, in the case referred to, to interfere and stay proceedings in the court of vice-admiralty, which alone has jurisdiction over the subject matter. Several of the cases alluded to were commenced during my absence from home; and the evidence in these cases has not yet been submitted to me.

In the cases of the vessels at Yarmouth, commissions have been issued to examine witnesses, which are not yet returned.

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The three American schooners seized at Beaver Harbor, by Mr. Darby, have been proceeded against by me as advocate general, and the examination duly taken; whereby it appears that the crews of two of them had actually fished with set nets in that harbor, and had taken fish on board therefrom from the night before the seizure; and this evidence is confirmed by the mate of one of those vessels, an American subject. In the case of the third, which is one of those noticed by Mr. Morrow, the evidence at present is not so conclusive. In the case of the seizure by Mr. Forrester (alluded to) the evidence has not been submitted to me; but I will call for it, as in the other cases, before any other proceeding is had, after the return of the monition.

In all cases where the evidence is not complete on the part of the seizors no decree will be urged by default against vessels or cargo, until the most ample time and opportunity are afforded the owners or others concerned to make defence, which I shall feel it my duty to allow them to do in such cases upon the most favorable terms which by law can be granted. And in any case where there does not appear good cause of detention and prosecution, I will exercise my own discretion, as in the case referred to in No. 1, now enclosed; which course, I hope, will meet the approbation of his excellency and her Majesty's government.

S. G. W. ARCHIBALD,
Advocate General.

JUNE 20, 1839.

Mr. Vail to Mr. Fox.

DEPARTMENT OF STATE.
Washington, July 10, 1839.

SIR: I have the honor to communicate to you copies of papers referred to this department by the Secretary of the Treasury, respecting the seizure of several fishing boats belonging to citizens of the United States, by the British government vessel "*Victory*," in the Bay of Fundy, on a charge of having been engaged in taking fish within British jurisdiction contrary to existing treaty stipulations between the United States and Great Britain, and the laws of the Province of Nova Scotia.

You will perceive from these papers, that, in the opinion of the naval officer despatched by the collector of customs at Boston to inquire into the circumstances of the seizures, and of the consular agent of the United States at Yarmouth, who had been desired to furnish the information in his possession on the subject, some, at least, of those seizures were made for causes of a trivial character, and with a rigor not called for by circumstances. Not doubting that justice will ultimately be done to the sufferers by the colonial courts in which proceedings have been instituted against them, my object in addressing this communication to you is to invoke your good offices in calling the attention of Her Majesty's provincial authorities to the ruinous consequences of those seizures to our fishermen, whatever may be the issue of the legal proceedings founded upon them, and

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to the consequent expediency of great caution and forbearance in future, in order that American citizens, not manifestly encroaching upon British rights, be not subjected to interruption in the lawful pursuit of their profession.

I have the honor, &c.,

A. VAIL, *Acting Secretary.*

HENRY S. FOX, Esq., &c., &c.

Collector Jarvis to Mr. Forsyth.

DISTRICT OF FRENCHMAN'S BAY,
COLLECTOR'S OFFICE,
Ellsworth, July 15, 1839.

SIR: The schooner *Charles*, Captain Benjamin S. Moore, fitted for the Magdalen Islands herring fishery on the 27th of April last; and after making her fare, on her return put into the harbor called Pirate cove, near the big Gut of Canso, and had not lain there twenty two hours, when the schooner was boarded by an officer of the revenue, called a seizing officer, and by him taken possession of and carried to Guysborough. The only pretence for this seizure was, that the schooner was under cod-fishing license, and had on board herrings. The vessel, after a detention of nineteen days, was given up by directions from Halifax. That at the time of said seizure, the officer took from him ten barrels of his herrings, which have never been returned; and the remainder of his cargo, by the detention, has been nearly all lost. The name of the seizing officer was John G. Marshall.

Captain Benjamin Moore is a very poor man, and totally unable to bear such a loss. It is at his request I write to solicit the aid of the government in his behalf, knowing of no manner in which he can obtain compensation for his losses from this British officer, but through his own government.

I am, very respectfully, sir, your obedient servant,

EDWARD S. JARVIS.

Hon. JOHN FORSYTH,
Secretary of State.

Mr. Forsyth to Mr. Fox.

DEPARTMENT OF STATE,
Washington, July 24, 1839.

SIR: I have the honor to communicate to you a copy of a letter addressed to this department by the collector of customs of the district of Frenchman's bay, asking its interposition in obtaining for Captain Benjamin S. Moore, of the fishing schooner "*Charles*," the restitution of ten barrels of herrings taken from him by the officer who seized his vessel, and still withheld after her release by the authorities of Halifax. As the vessel was given up, it is presumed that the seizure has been made upon insufficient grounds, and there-

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fore, that upon the institution of legal proceedings, Captain Moore would obtain the restitution of the property still withheld from him. As it seems, however, that he is poor, that he has already suffered a heavy loss in consequence of the detention of his vessel, and consequently that he could but ill bear the expense and delay attending such legal proceedings, I request that you will use your good offices with the authorities of Halifax to procure for the claimant either the return of his property or such indemnity for the loss of it as may seem reasonable and just.

I have the honor, &c., JOHN FORSYTH.

HENRY S. FOX, Esq., &c., &c., &c.

Mr. Woodbury to Mr. Vail.

TREASURY DEPARTMENT, *August 1, 1839.*

SIR: I have just received from the State Department a letter addressed to it from Judge Parris, enclosing another from Colonel Thayer, of Lubec, in respect to certain difficulties with the British cruisers and citizens in that neighborhood.

On a perusal of them, I entertain no doubt that it is proper for the State Department to lay those letters before the President for his instructions as to what remonstrance should be made to the British authorities on the subject, and as to the expediency of having a vessel of war visit the coast for the preservation of tranquility.

This department not appearing to have any power over the matter, the letters are returned, in order that, if deemed proper by you, they may be forwarded to the President.

Respectfully, LEVI WOODBURY,
Secretary of the Treasury.

A. VAIL, Esq.
Acting Secretary of State.

[Inclosure No. 1.]

Mr. Parris to Mr. Vail.

WASHINGTON, *July 31, 1839.*

SIR: The writer of the letter of which the enclosed is a copy, is a gentleman of high respectability in Maine, whose representations are entitled to entire credit.

At his request, I communicate the facts contained in his letter to the Secretary of State of the United States.

I have the honor to be, sir, with great respect, &c.

ALBION K. PARRIS.

The SECRETARY OF STATE.

[Sub-inclosure.]

Mr. Thayer to Mr. Parris.

LUBEC, *July 20, 1839.*

SIR: I have this morning been informed that some depredations have already been made upon Grand Manan by our fishing vessels,

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that now number four or five hundred in the Bay of Fundy, and that a serious attack is in contemplation.

The complaints of the inhabitants of this island have resulted in refusing to our vessels any shelter during bad weather. They are indiscriminately ordered to sea. Three of her Britannic Majesty's armed brigs are cruising in the bay, for the avowed purpose of clearing the coast of our vessels.

Nearly one hundred of our vessels, thus driven from positions secured to them by treaty, are in our harbor and know not what to do. Their licenses are endorsed by the commandants of these British vessels as follows: "Found within the limit prescribed by treaty, and ordered off." One license I saw yesterday endorsed: "Found *fishing* within the limits prescribed by treaty, July 17, 1839.—J. B. Tarlton, Lieutenant H. B. M. brig *Ringdove*."

The master of this fishing vessel (schooner *Daniel*, of Waldoboro') told me that he had been lost in the fog, and used a fishing lead and line to sound with, and that this lead hung over his quarter when boarded.

Towing our vessels indiscriminately to sea, whatever may be the state of the weather, is justified upon the ground that our vessels have no right to enter the Bay of Fundy, much less any of the bays and creeks of the Bay of Fundy.

Our fishermen are generally armed, and will not bear these indignities. They can furnish some thousands of as fearless men as can be found anywhere, at short notice; and, unless our government send an armed vessel here without delay, you will shortly hear of bloodshed: five hundred fishermen, with an average crew of ten men, will not long suffer the tyranny of drunken lieutenants in the British navy.

Please lay this matter before the proper authorities, and oblige your humble servant.

SOLO. THAYER.

Hon. A. K. PARRIS,
Second Comptroller, Washington.

[Inclosure No. 2.]

Mr. Barker to Mr. Woodbury.

TREASURY DEPARTMENT,
FIRST COMPTROLLER'S OFFICE,
June 17, 1839.

SIR: The communication of Messrs. B. and J. M. Leavitt, in reference to the treaty stipulation by which our fishermen are regulated, presenting a question of diplomatic character, it is respectfully conceived, ought to be submitted to the Secretary of State. I therefore return it enclosed.

I am, very respectfully, your obedient servant.

J. N. BARKER, *Comptroller.*

Hon. LEVI WOODBURY,
Secretary of the Treasury.

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[Sub-inclosure.]

B. & J. M. Leavitt to Mr. Woodbury.

BOSTON, *June 13, 1839.*

SIR: Difficulties having occurred in relation to our fishing in the Bay of Chaleurs, Gulf of St. Lawrence, Bay of Fundy, and on the coast of Nova Scotia, we request the favor of instructions as to the fact whether any other, or those treaty stipulations of 1783, are now the regulations by which our fishermen are to be governed.

Very respectfully, your obedient servants,

B. & J. M. LEAVITT.

Hon. LEVI WOODBURY,
Secretary of the Treasury.

P. S.—We wish an answer for publication to our fishermen, should the Department have no objection to our adopting that course.

[Inclosure No. 3.]

Mr. Bancroft to Mr. Woodbury.

CUSTOM-HOUSE,
Boston, June 27, 1839.

SIR: The naval officer of this port has, at my request, addressed me a letter on the subject of the late cruise of the *Hamilton*, in which he bore a part. I enclose a copy of it. I enclose, also, a printed copy of Mr. Grantham's letter.

Captain Sturgis has performed his duty entirely to my satisfaction, and has confirmed the high opinion I had heretofore expressed of him.

Very respectfully,

GEORGE BANCROFT, *Collector.*

Hon. LEVI WOODBURY,
Secretary of the Treasury.

[Sub-inclosure 1.]

Mr. Barnes, naval officer, to Mr. Bancroft, collector at Boston.

NAVAL OFFICE,
Boston, June 27, 1839.

SIR: In reply to your note of yesterday, asking me to state such facts as may have come to my knowledge in relation to the late seizures of American fishing vessels by the British government, I have to say, that during the past week I visited Yarmouth, in the Province of Nova Scotia, and its immediate neighbourhood, in company with the officers of the United States revenue-cutter *Hamilton*, by your permission, with a view to ascertain the names of as many as possible of the American fishing vessels now seized and detained by the British government, with the alleged causes of their seizure and detention. The statement of Henry A. Grantham, esq., our consular agent at Yarmouth, made at my request, and addressed to the commanding officer of the *Hamilton*, exhibits very fully the facts in relation to the seizure of four of the vessels in question. While at Yarmouth, I had the pleasure of meeting very many highly

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respectable and intelligent gentlemen of that town, who seemed deeply to regret that their own government officers should have proceeded with so much rigor against the American fishing craft, believing with the consul and the Americans generally, that, in a majority of cases, the seizures had been made for causes of the most trivial character. It is perfectly certain that our fishermen must have the right to resort to the shores of the British provinces for shelter in bad weather, for fuel, and for water, unmolested by British armed cruisers, or this important branch of American industry must be, to a very great extent abandoned. It affords but poor consolation to the fisherman, whose vessel has been wantonly captured, and who finds himself and his friends on shore among foreigners already sufficiently prejudiced against him, without provisions and without money, to be told that the court of vice-admiralty will see that justice is done him, and that, if innocent, his vessel will be restored to him. The expenses of his defence and the loss of the fishing season are his ruin.

These seizures are made under a colonial law of the province of Nova Scotia. I could not learn what disposition is made of the property seized, after it is decreed forfeited; but I believe it is divided among the persons making the captures. If this be the fact, it will sufficiently explain any discrepancy in the testimony of the witnesses, which may appear in Mr. Grantham's statement; and it will also, perhaps, explain the eagerness with which these fishing vessels seem to be taken and carried into port for trial.

I learned in Yarmouth, and also on the American coast, in the State of Maine, where our vessel touched for the purpose of landing the two destitute fishermen mentioned by Mr. Grantham, that many more of our vessels had been seized, during the present season, at the Gut of Canso. Some of these seizures have been made for other and different causes from those now detained at Yarmouth. The officers of the British cruisers accuse the masters of these vessels of carrying on an illicit trade in the articles of tea and tobacco with the British subjects of Nova Scotia. I have, from the best authority, the facts in one of these cases: The captain of an American fishing schooner had on board, among other ship's stores, half a keg of tobacco for the use of his crew. An inhabitant of the province came on board his vessel, and, after great importunity, persuaded the American to let him have a few pounds, for which he paid in a small quantity of wood. The purchaser of the tobacco immediately informed the officers of the government; and the vessel, her cargo, and provisions, are now under seizure for this offence. It is, of course, impossible to predict the result of the examination of all the cases in the court of vice-admiralty at Halifax, where they are now pending. The owners and persons interested hope, however, that that tribunal will discriminate between cases of a flagrant and premeditated violation of the treaty and the laws of the provinces, and the mere trivial, unimportant, and fortuitous offences which are described in Mr. Grantham's statement, and which are known to many other persons to have been hastily and very imprudently brought up for adjudication.

In conclusion, permit me to add, that we were received with great courtesy and kindness by the public officers and citizens of Yarmouth; and that we are under special obligations to Mr. Grantham, our con-

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sular agent, for the very prompt and obliging manner in which he furnished all the information in his power upon the subject of our inquiry.

I am, very respectfully, your obedient servant,

ISAAC O. BARNES, *Naval officer.*

To GEORGE BANCROFT, Esq.,
U. S. Collector, &c., Boston.

[Sub-inclosure 2.]

Consular Agent Grantham to Commander Sturgis.

CONSULATE OF THE UNITED STATES,
Yarmouth, N. S., June 18, 1839.

SIR: At your request, I enclose to you an abridged statement of the depositions of the masters and crews of the four American fishing schooners lately seized by the commander of the British government vessel *Victory*, and now lying detained in this port; together with a succinct account of my proceedings upon the application to me for assistance by the masters of these vessels.

Upon the 27th day of May last, application was made to me, as the consular agent of the United States at this port, by William Burgess, master of the American fishing schooner "*Independence*," for advice and assistance, under the following circumstances: On Sunday, the 26th day of May last, while lying at anchor in the Tusket Islands, near the coast of this province, the said schooner was boarded, and, with her cargo and papers, seized and taken possession of by the commander and part of the crew of the British government vessel "*Victory*" for an alleged infraction, by the crew of the "*Independence*," of the treaty between Great Britain and the United States, and the laws of this province for the protection of the British fisheries. The schooner was brought into this port stripped of her sails and part of the rigging, and the master and crew obliged to leave her. Depositions of the master, William Burgess, and of the crew, Benjamin Sylvester, Samuel C. Mills, Ezekiel Burgess, and Samuel Burgess, all of Vinalhaven, in the State of Maine, were taken to the above facts, and also to those which follow. They deposed that the schooner *Independence*, of the burden of thirty-one tons, or thereabouts, and belonging to Vinalhaven, was fitted out and cleared from that port on a fishing voyage into the Bay of Fundy, on the 10th day of April last; and that they continued to fish in the bay (never at any time at a less distance from the coast of Nova Scotia than fifteen miles) until about the last of April of the present year, when being in want of water, and it blowing very heavy, they stood in for the coast, and anchored in the Tusket Islands, where they remained about twenty-four hours.

At the expiration of that time they again put to sea, and remained upon the fishing-ground until the 25th day of May last, when, the compass having been accidentally broken, and there being no other on board, they again stood in for the coast, intending to make the port of Yarmouth, for the purpose of having the compass repaired, and of procuring a supply of water; but the wind being adverse and very violent, and the weather thick and hazy, they were unable to

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make that port, and were obliged to take shelter in the Tusket islands for the night, at which place they were seized the next day, as before mentioned.

The master and crew of this vessel deposed, most solemnly, that no fish, of any kind or description, had been taken or caught by them during the present season, or since their departure from port, either in the Tusket islands, or at any distance nearer to the coast of Nova Scotia, or of any of the British possessions in America, than fifteen miles; and that at no one time did they remain at anchor in the said islands, or in any port on the coast, for a longer space than twenty-four hours. They however admitted that, at the earnest solicitation of an inhabitant of the Tusket islands, (whose name was to them unknown,) they did, for one night lend their nets to him, and that they received from him, on the following morning, a few herrings. This occurred but once, and for one night only; they never having remained in the islands for two consecutive nights.

The master of the American fishing schooner *Magnolia*, seized at the same time and place, deposed, in substance, to the same effect as the foregoing, except that they had not lent or parted with their nets. They deny most positively having fished, or attempted to take or catch fish, within fifteen miles of the coast of this province during the present season. The *Magnolia* is of the burden of thirty-seven tons, or thereabouts; belongs to Vinalhaven and was fitted out and cleared from that port on a fishing voyage into the Bay of Fundy; she sailed from that port on the 26th day of April last, and was twice in the Tusket islands for shelter and for wood and water during the present season. The master's name is George Poole, the names of the seamen are William S. Coombs, David Lane and Samuel Clark, all residing at or near Vinalhaven, in the State of Maine.

The master of the schooner *Java* acknowledged that he and his crew had taken fish in the islands, and was aware that the fact of his having done so could be proved against him. We therefore declined to make any effort for his relief. The *Java* was fitted for a fishing voyage into the Bay of Fundy, and belonged to Vinalhaven; and she was seized at the same time and place as were the other two vessels before mentioned. Isaac Burgess was master; the crew were George McFarland, Charles J. Perkins and Thomas McFarland, all residing at or near Vinalhaven.

A few days subsequently, (on the 31st day of May last,) another application was made to me by James Turner, the master of the American fishing boat *Hart*, of Deer Island, in the State of Maine, who deposed that the boat was fitted out on a fishing voyage into the Bay of Fundy, about the last of April of the present year; that they had frequently been into the Tusket islands to seek shelter, and to obtain wood and water; and once only they anchored in this port, having come hither for the purpose of hiring an additional hand. They continued to fish until the 30th of May last, when, being at anchor in the Tusket islands, the vessel, cargo and papers were seized and taken possession of by the commander of the *Victory*, who brought the vessel and cargo into this port, and obliged the master and crew to leave her. They state most positively that they have not, since their departure from the port of Vinalhaven, taken or caught fish of any kind or description within fifteen miles of the coast of Nova Scotia,

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or of any of the other British coasts; nor did they at any one time remain in or among the said islands for a longer space of time than twenty-four hours. They state, however, that the master and Hiram Rich, one of the crew, did receive from Benjamin Brown, the master of a British fishing vessel at anchor in the said islands, about two barrels of herrings, given to them by Brown, to recompense them for their services in assisting him for one night at his request, in clearing his nets of herrings, salting and curing his fish.

This took place during one night that they came into the island for wood and water. This statement is corroborated on oath by Hiram Rich and Albert Douglass, two of the crew of this boat, and by —— Powers, a resident of this place, the additional hand above mentioned, who deposed to the truth of the statement of the master and crew, subsequent to the time of his engagement with them; before which time they had not proceeded to fish at all.

Benjamin Brown, a resident of Yarmouth, and a person of much respectability, deposes, that he first saw this vessel, the *Hart*, in the Tusket islands, on the first of May last; she having then but just arrived, as he believes, from Deer Island, and not having been in the islands before, during the present season. He further states, that afterwards this boat frequently came into the islands, at times when the state of the weather was such that the safety of the vessel and crew would have been endangered at sea; and at other times, as he believed, for wood and water, having frequently observed them proceed to the shore and bring therefrom a supply of those necessaries. He was, to the best of his belief, aware of the boat's arrival whenever she came into the islands, her place of anchorage being close to his vessel; and he says that the boat never remained in the said islands, at one time, for a longer space than twenty-four hours. He usually witnessed the boat get under weigh, and she always stood directly out to sea. He had frequent opportunities of observing the conduct of the master and crew of this boat, and he verily believes that no fish of any kind were taken by them in or near the said islands, subsequent to the 1st of May, the date of his arrival there; nor does he believe that they came there for the purpose of fishing or setting nets; and that, had they done so, he must have been aware of it, as the boat always anchored close to his vessel. He further stated that, at his request, the master of the boat and one of the crew named Rich, assisted him for one night in clearing his nets of herrings and in salting his fish, for which service he gave them two and a half barrels of herrings; and that he had seen the nets seized on board the boat, and that the meshes were too small to admit of the taking by them of any description of herring that had been upon the coast during the present season.

These depositions I enclosed to John Morrow, esquire, United States consul at Halifax, for the purpose of using them to assist him in his endeavors to effect the release of the *Magnolia*, *Java* and *Hart*, on the plea of their having been seized and detained on insufficient grounds.

The masters of these three last named vessels, by my advice proceeded to Halifax, where they now are awaiting the decision of the government officers there, whether they will be obliged to contest the legality of the seizures in the court of vice-admiralty at that place.

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I have received no information from thence that can be depended upon, as to the probable issue of the exertions already made and now making in behalf of the owners and others interested in these vessels.

The affidavits which have been made to substantiate the legality of these seizures are:

1. That of John McConnell, of this place, who deposes that he did see the crew of the *Java*, between the 11th and 27th days of May last, in the Tusket islands, put their nets into the boat belonging to that vessel, and on the following morning he saw them return with a quantity of fish, which was repeated four or five times during the above mentioned period; and that the skipper of the *Java* acknowledged to him that he had taken fish within the prohibited limits for bait. He further states that on Sunday, the 26th of May last, he saw on the deck of the *Java*, then lying in the Tusket islands, a quantity of gurry, which the crew said was from about three quintals of fish caught the day before, and that he, (the master,) and crew threw the same overboard, being then about two miles from Tebogue Point, in Yarmouth.

2. The same person, John McConnell, further deposed, that he saw the *Magnolia*, about two weeks previously, when at anchor in the islands, send two boats away in the evening with nets, and return again the next morning with fish; which also again took place for several successive days. He further stated, that the crew of the *Magnolia* did, about the same time, acknowledge that they were then taking fish among the Tusket islands, and had before been doing the same.

3. David McConnell, of Yarmouth, made oath that the skipper of the American schooner, *Independence*, acknowledged to him, on the 26th day of May, that he had hired nets belonging to that schooner to the skipper of an English fishing vessel, to be set by him on shares.

4. Jonathan Baker, of Yarmouth, deposed that between the 11th and 18th days of May last he saw the crew of the American schooner *Java*, then at anchor in the Tusket islands, put the nets out of the schooner into the boats in the evenings of four different days, leave the vessel, and return in the morning with the nets and a quantity of herring.

5. Joseph Darby, commander of the schooner *Victory*, deposed that he did see from on board the said schooner *Victory*, then lying in the Tusket islands, the crew of the American fishing-boat *Hart* cleaning fish on board of that vessel; and that the master of the *Hart* acknowledged to him that he did about a week previously procure from Benjamin Brown two barrels of fresh herrings for bait.

The crew of the *Magnolia* positively deny the truth of the depositions made against them, and they say that their vessel must have been mistaken for some other. The crew of the *Independence* also deny having hired their nets. And it is probable that the acknowledgment sworn to as made by the masters has been misunderstood by the person to whom it was made; the real admission having been the lending the nets for one night to an inhabitant of the Tusket islands, as is mentioned in the deposition of the master and crew of the *Independence*. I need not remark upon the insufficiency of the evidence upon which the seizures of the *Independence* and *Hart* have been made. It consists entirely of verbal acknowledgments, which may

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be, and usually are misunderstood or misconstrued, and can seldom be correctly repeated; and indeed, taking for granted that the admissions sworn to have been made by the masters of these vessels, I cannot understand that they amount to evidence to authorize a seizure.

I may observe that these vessels have all been fitted out on shares; that is, each man on board in lieu of wages receives a share of fish at the termination of the voyage. This circumstance may be of importance, as it probably may affect their evidence in the court of vice-admiralty.

I have at present at this consulate two destitute American seamen of the boat *Hart*, (James Rich and Albert Douglas,) who, if not contrary to your instructions, I have to request that you will receive on board the cutter *Hamilton*, and land them at some convenient port in the United States.

The crews of the *Java*, *Magnolia* and *Independence* were put by me on board of a British schooner, the master of which landed them at Castine, in the State of Maine. They were in a perfectly destitute condition, the provisions and stores of the vessels having been seized. I had therefore to provide for them while they remained in this place, and to find them a passage to the United States.

I am, sir, your obedient, humble servant.

HENRY A. GRANTHAM,
Consular Agent U. S. for the Port of Yarmouth, N. S.

JOSIAH STURGIS, Esq.,
Commander of the American Revenue-Cutter Hamilton.

CUSTOM-HOUSE,
Boston, June 27, 1839.

I certify that the foregoing is a true copy from the original addressed to Captain Sturgis by Henry A. Grantham, Esq.

G. BANCROFT, *Collector.*

Consul Morrow to Mr. Forsyth.

(No. 78.) CONSULATE OF THE UNITED STATES OF AMERICA,
Halifax, N. S., August 8, 1839.

SIR: Since I had the honor to address you, under date the 27th June, (No. 77) several proceedings have been had with respect to the vessels therein named; some have been released on payment of expenses, and others have been condemned.

I beg leave most respectfully, to recapitulate the fate of each vessel:

The schooner *Eliza*, of Portland, has been released on payment of expenses, amounting in all, to £84, 17s. 10d., (this currency,) of $339.56; this, however, contains my commisison on cash advanced to release her, and incidental charges connected with a bottomry.

Schooner *Shetland*, of Boston, released in a like manner; her expenses about $600; but the money was paid by a house of business here, and I do not know the exact amount.

Schooner *Charles* discharged without any expense.

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Schooner *Mayflower*, of Boothbay, released; her expenses amounted to £75, 6s. 4d., which I paid. Incidental charges included in this sum.

The *Eliza*, *Charles*, and *Mayflower* have evidently been brought under the operation of a law which I cannot but feel is exceedingly severe—perhaps I should say unjust. It was thought advisable, however, to pay the sums at which they were assessed, rather than have the vessels detained, and, perhaps, subjected to further difficulty.

The *Shetland* stood in a different position, and escaped condemnation by the merest accident.

The *Battelle* and *Hyder Ally* have been condemned and sold.

I bought the former for the owner, who has come on to this place and claimed her. I charged him five per cent commission, which he paid. He took a sea-letter for Boston from this office, the schooner's papers being filed in the registry of the court of vice-admiralty.

The *Magnolia*, *Independence*, *Java and Hart* were condemned in the court of vice-admiralty on the 5th instant; and an order has gone to Yarmouth for the sale to take place immediately.

The owner of the two former is here, and he will proceed to Yarmouth to purchase them.

I have a power of attorney from the owner of the *Hart* to purchase for him; and I have given directions that the *Java* may also be bought on account of the owners, if it be possible, by so doing, to save these poor men from ruin.

The *Hyder Ally* remains in my possession, and will, I think, be claimed in a few days, as the owner has written respecting her.

A new case has arisen: The schooner *Amazon* was seized by the collector of light duties, at the Gut of Canso, and the master transmitted an affidavit to me relating the circumstances of the seizure. I immediately applied to the advocate general, who, after a few days, handed me an order for her release, addressed to the seizing officer, but left open, so that I might send it to the person having the vessel in custody, it being reported that the collector of light duties had absconded.

The master of this vessel will have to pay the expenses attendant on his detention and custody, for which I have become answerable; and how I am to be reimbursed I do not know.

I have the honor to be, sir your obedient, humble servant.

JOHN MORROW.

HON. JOHN FORSYTH,
Secretary of State, Washington.

Mr. Vail to Commodore Chauncey.

DEPARTMENT OF STATE,
Washington, August 9, 1839.

SIR: Several seizures of fishing vessels belonging to citizens of the United States having been made by British cruisers in the harbors and along the coasts of Nova Scotia, the President has ordered an inquiry into the subject, and has directed me to inform your department that, for the purpose of protecting the rights and interests of

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our citizens in that quarter, a vessel of war, of suitable force, will soon be required to cruise off the coasts referred to.

I am, &c.

A. VAIL, *Acting Secretary.*

Commodore I. CHAUNCEY,
Acting Secretary of the Navy.

Commodore Chauncey to Mr. Vail.

NAVY DEPARTMENT,
August 9, 1839.

SIR: I have the honor to acknowledge the receipt of your letter of this date, apprising the department that, for the protection of the rights and interests of our citizens engaged in the fisheries along the coasts of Nova Scotia, a vessel of war will soon be required to cruise off these coasts; and to inform you that the United States schooner *Grampus*, now lying at Norfolk, will be prepared to proceed to that quarter with all practicable despatch, in obedience to the wishes of the President of the United States, as indicated by your letter.

I am, very respectfully, your obedient servant.

I. CHAUNCEY,
Acting Secretary of the Navy.

A. VAIL, Esq.
Acting Secretary of State.

Mr. Vail to the President of the United States.

DEPARTMENT OF STATE,
August 14, 1839.

In obedience to the direction of the President, received at the Department of State on the 9th instant, "to report to him the treaty stipulations which bear upon the subject, (the seizure of American fishing vessels on the coast of Nova Scotia;) the conflicting questions of right, if any, which have arisen under them; and the nature and circumstances of the cases which have been presented to this government by our citizens, as infractions of right on the part of the British authorities," the acting Secretary of State has the honor to state:

That the only existing treaty stipulations bearing upon the subject are found in the first article of the convention between the United States and Great Britain, signed at London on the 20th of October, 1818, which is in the words following:

"Whereas differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof to take, dry and cure fish on certain coasts, bays, harbors and creeks of his Britannic Majesty's dominions in America, it is agreed between the high contracting parties, that the inhabitants of the said United States shall have forever, in common with the subjects of his Britannic Majesty, the liberty to take fish of every kind on that part of the southern

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coast of Newfoundland which extends from Cape Ray to the Rameau islands; on the western and northern coast of Newfoundland, which extends from the said Cape Ray to the Quirpon islands; on the shores of the Magdalen islands; and also on the coasts, bays, harbors, and creeks, from Mount Joly, on the southern coast of Labrador, to and through the straits of Belleisle; and thence northwardly, indefinitely, along the coast, without prejudice, however, to any of the exclusive rights of the Hudson Bay Company. And that the American fishermen shall also have liberty forever, to dry and cure fish in any part of the unsettled bays, harbors and creeks of the southern part of the coast of Newfoundland, here above described, and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground. And the United States hereby renounce forever, any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbors of his Britannic Majesty's dominions in America, not included within the above mentioned limits: Provided, however, That the American fishermen shall be admitted to enter such bays or harbors for the purpose of shelter, and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever; but they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

Under this article—

1. American vessels are allowed, forever, to take, dry, and cure fish on and along the coasts of Newfoundland and Labrador, within certain limits therein defined.

2. The United States renounce, forever, any liberty before enjoyed by their citizens to take fish within three marine miles of any coasts, bays, creeks, or harbors of the British dominions in America, not included within the above limits, i. e. Newfoundland and Labrador.

3. American vessels retain the privilege (under necessary restrictions to prevent their taking fish) of entering the bays, creeks, and harbours of said possessions, for the purposes of shelter, repairing damages, purchasing wood and obtaining water, and for no other purpose whatever.

It does not appear that the stipulations in the article above quoted have, since the date of the convention, been the subject of conflicting questions of right between the two governments. The rights of the respective parties are so clearly defined by the letter of the treaty, as scarcely to leave room for such questions of an abstract or general character. In their actual operation, however, inasmuch as their application on the part of Great Britain was to be subjected to local legislation, and committed to the hands of subordinate British agents, the provisions of the treaty might naturally be expected to give rise to difficulties growing out of individual acts on either side. The recent seizures appear to have had their origin in such causes, like other causes of anterior date, to which a brief allusion may here be useful.

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In June, 1823, the Secretary of State addressed a note to the British minister at Washington, complaining of the seizure of the schooner *Charles*, and demanding reparation for the indignity offered to the American flag. The answer of the British government was, that the vessel had been found at anchor in a British harbor, which she had entered on a false pretense of avoiding a storm; and had been legally condemned by the vice-admiralty court of New Brunswick, for a breach of the convention of 1818, and of the act of Parliament to carry the same into effect. The vessel was subsequently restored.

In September, 1824, a complaint was made to the British chargé d'affaires that several citizens of the State of Maine had been interrupted by British cruisers, while engaged in taking and curing fish in the Bay of Fundy; and was accompanied by a similar demand of indemnity and reparation. The British chargé d'affaires, in answer, promised to institute an inquiry into the circumstances of the case, invited the United States to a similar proceeding on their part, and closed with a remonstrance against the act of American citizens who, with an armed force, had rescued the seized property from the custody of British officers.

In January, 1836, the British government became, in its turn, the complainant. Its chargé d'affaires at Washington, remonstrated against the encroachments of American citizens upon the fishing grounds secured exclusively to British fishermen by the convention of 1818. The result of this complaint was a circular letter addressed by the Secretary of the Treasury to the officers of customs in districts where vessels are licensed for the fisheries, directing them to impress the crews of fishing vessels with a sense of the treaty obligations of their government, and of the dangers to which they exposed themselves by encroaching upon British rights. The recent cases of seizure constitute the last instance of alleged violation of rights, and the charge is laid to the British account. The attention of this department was first called to the subject by a reference by the Treasury of a letter from B. & J. M. Leavitt, of Boston, asking for information as to the existing treaty stipulations regulating the matter. The inquiry was answered by a reference to the first article of the convention of 1818. On the 3d of July the Secretary of the Treasury referred to the department a communication from the collector of Boston, transmitting a report from the naval officer who had been despatched to Nova Scotia with directions to inquire into the alleged causes of the seizure and detention of American fishing vessels. The report, after alluding in general terms to some of the seizures, refers, with regard to the particulars of four of the cases then pending before the court of vice-admiralty of Halifax, to an abridged statement, furnished by the consular agent of the United States at Yarmouth, of the depositions of the masters and crews of three American fishing schooners, viz: the *Independence*, the *Magnolia*, and the *Java*, and the fishing boat *Hart*. The statement, with the report accompanying it, is annexed, and contains the most detailed information in the possession of this department in relation to the "nature and circumstances of the cases."

According to that statement, the *Independence* is alleged to have anchored in the Tusket islands, and, while there, hired her nets to an English fisherman, for the purpose of taking fish on shares. The crew state that they were forced to anchor there by stress of weather;

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and that their nets had been lent, and not hired, for which they had received a few herrings.

The *Magnolia* is charged with having been engaged in fishing while at anchor in the Tusket islands, and with the fact having been acknowledged by the crew. This is denied; and the reason alleged for anchoring within British grounds is, want of shelter, wood and water.

The charge against the *Java*, of having been engaged in taking fish in the Tusket islands, is admitted by the master.

Against the *Hart* is alleged that her crew were seen cleaning fish on board, while at anchor in the islands, and that her master had acknowledged that he had procured a quantity of herrings. The taking of fish is denied; and the fact of the crew having been seen cleaning fish is explained by stating that two barrels of herrings had been received from a British fisherman in recompense of services rendered.

On the 20th of July, a letter from the consul of the United States at Halifax, dated the 27th of June, was received at this department, informing it of the seizure of the four vessels above referred to, and of seven others, viz: the "*Shetland*," seized at Whitehead, near Canso; the "*Charles*," at Canso; the "*Mayflower*," and a schooner name unknown, at Guysborough; the "*Battelle*," "*Hyder Ally*," and "*Eliza*," at Beaver harbor.

The "*Shetland*" was seized on the ground of the master having sold to a lad who came on board, while the vessel lay at anchor in the harbor of Whitehead, whither she had been forced by stormy weather, a pair of oil-cloth trousers, and small quantities of tea and tobacco. The master states that in doing so he yielded to the importunities of the lad, whom he believes to have been sent purposely to entrap him into an attempt at smuggling. He denies having caught fish within British limits.

With the exception of the "*Eliza*," which was likewise compelled to make a harbor by bad weather, and the crew of which deny having taken fish within the British limits, or having sold or bartered any articles whatever, the particulars of the cases are not given; but in communications addressed by the consul to the Lieutenant Governor of Nova Scotia, asking his interference in behalf of the owners of the seized vessels, he urges the exercise of indulgence and mercy, on the ground that some of the sufferers had only erred in a slight degree either from ignorance or temptation, and without intention to violate regulations, for the existence of which they might, perhaps, never have heard.

The communications from the consul to the Lieutenant Governor of Nova Scotia, having been referred to the advocate general of the Province, underwent examination, and a copy of his report accompanies the consul's letter to the department. In this document, the advocate general denies the power of the Governor to interfere or stay proceedings in the court of vice-admiralty, which alone has jurisdiction over the subject matter. He adds, that several of the cases had been commenced during his absence, and the evidence had not yet been submitted to him.

Commissions had been issued to take depositions in others. Three vessels had been proceeded against by him, and the examination had proved that the crews of two of them had actually taken fish with

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set nets in Beaver Harbor. In all other cases, where the evidence had not been submitted to him, it was to be called for before any further proceedings were had. He concludes by stating that, where the evidence is not complete, no decree will be urged by default, until ample time and opportunity be afforded for defence, upon the most favorable terms that by law can be granted; and that in any case where there shall not appear good cause of prosecution, he will exercise his own discretion in releasing the property.

From these statements it will appear that the only cases of seizure of which anything is known at the department, not being made on the coasts of Newfoundland or Labrador, occurred at places in which, under the convention of 1818, the United States had forever renounced the right of their vessels to take, dry and cure fish; retaining only the privilege of entering them for the purposes of shelter, repairs, purchasing wood and obtaining water, and no other. In the absence of information of a character sufficiently precise to ascertain either, on the one side, the real motives which carried the American vessels into British harbors, or, on the other, the reasons which induced their seizure by British authorities, the department is unable to state whether, in the cases under consideration, there has been any flagrant infraction of the existing treaty stipulations. The presumption is, that if, on the part of citizens of the United States, there has been a want of caution or care in the strict observance of those stipulations, there has been, on the other hand, an equal disregard of their spirit, and of the friendly relations which they were intended to promote and perpetuate, in the haste and indiscriminate rigor with which the British authorities have acted.

Under the supposition that many of the seizures had been made upon insufficient grounds, and in order, if possible, to preclude for the future the recurrence of such proceedings, the acting Secretary of State, in a note dated the 10th of July, called the attention of the British minister to the cases of seizure which had come to the knowledge of the department, and requested him to direct the attention of the provincial authorities to the ruinous consequences of the seizures to the owners of the vessels, whatever might be the issue of the legal proceedings instituted against them; and to exhort them to exercise great caution and forebearance in future, in order that American citizens, not manifestly encroaching upon British rights should not be subjected to interruption in the pursuit of their lawful avocations. The President's directions, that a vessel of war of suitable force should be held in readiness to proceed to the coasts of the British provinces having been communicated to the Secretary of the Navy, an answer has been received that the schooner *Grampus*, now lying at Norfolk, would be prepared to proceed to that quarter at a moment's notice; and that, should it be the desire of the President that a vessel of higher class should be employed on that duty, a sloop of war can be detailed from the station at Pensacola so as to be ready to sail at the end of this month.

Respectfully submitted.

A. VAIL,
Acting Secretary of State.

To the PRESIDENT OF THE UNITED STATES.

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Mr. Vail to Commodore Chauncey.

DEPARTMENT OF STATE,
Washington, August 29, 1839.

SIR: In consequence of the recent seizures of several American vessels on the coast of Nova Scotia by the British colonial authorities, the President has determined that the schooner *Grampus*, which he deems sufficient for this service, shall be despatched to the coasts of the British provinces in the neighborhood of the fisheries, under the command of a judicious and competent officer, to be selected by the Secretary of the Navy, and furnished with instructions distinctly setting forth the rights of citizens of the United States under the treaty with Great Britain of the 20th of October, 1818, and making it his duty to protect them in the enjoyment of those rights, as well as to caution them against any infraction, on their part, of existing conventional stipulations. To enable you to carry these directions into effect, I have the honor to transmit to you herewith, copies of papers containing all the information possessed by this department on the subject to which they relate; and, at the same time, to suggest that the consuls of the United States in the British provincial ports referred to, (to whom application may be made by the commander of the *Grampus*,) will, doubtless, cheerfully aid, by their advice, and by the communication of any pertinent facts within their knowledge, in advancing the objects of this visit.

I am, &c.,

A. VAIL, *Acting Secretary.*

Commodore ISAAC CHAUNCEY,
Acting Secretary of the Navy.

Commodore Chauncey to Mr. Vail.

NAVY DEPARTMENT, *August 30, 1839.*

SIR: Your letter of yesterday's date, stating the determination of the President that the schooner *Grampus* shall be despatched to the coasts of the British provinces in the neighborhood of the fisheries, under the command of a judicious and competent officer, to be selected by the Secretary of the Navy, and furnished with instructions distinctly setting forth the rights of citizens of the United States under the treaty with Great Britain of October, 1818, and making it his duty to protect them in the enjoyment of those rights, as well as to caution them against any infraction, on their part, of existing conventional stipulations, has been received, together with the copies of documents therewith transmitted.

The schooner *Grampus* is ready for sea, and shall be despatched in accordance with the determination of the President, as soon as the necessary instructions can be prepared and transmitted to her commander.

I am, very respectfully, your obedient servant,

I. CHAUNCEY,
Acting Secretary of the Navy.

A. VAIL, Esq.,
Acting Secretary of State.

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Commodore Chauncey to Mr. Forsyth.

NAVY DEPARTMENT, *September 4, 1839.*

SIR: Lieutenant John S. Paine, commanding the United States *Grampus*, was yesterday ordered to proceed, without delay, to the coasts of the British provinces, in obedience to the directions of the President communicated to this Department by the Department of State on the 29th ult.

I am, very respectfully, your obedient servant,

I. CHAUNCEY,
Acting Secretary of the Navy.

Hon. JOHN. FORSYTH,
Secretary of State.

Consul Primrose to Mr. Forsyth.

(No. 13) CONSULATE OF THE UNITED STATES,
Pictou, N. S., *October 10, 1839.*

SIR: I beg leave to enclose to you copies of several affidavits relative to difficulties which have been experienced by American citizens during the past season in their intercourse with this Province, and in the prosecution of the fisheries on its coasts; together with copies of the correspondence which I have entered into with the provincial authorities on the subject.

Being in daily expectation of a definite reply to my communications to the provincial Secretary, I delayed writing to you, in the hope of being able to lay the whole matter before you at once; but, at the suggestion of Commander Paine, with whom I have recently had an interview, I transmit these documents now, and will forward copies of other communications on the subject as they occur.

The tax of six and two-third cents per ton register of shipping, collected by the Province of Nova Scotia at the Strait of Canso, is levied on British as well as foreign ships; but it becomes a heavy charge on American vessels making four or five trips a year to this port, in the coal trade; and as there is no impost on shipping in American ports for the support of lights on the coast of the United States, such a tax on American vessels in the ports of the British colonies inovlves a discrepancy in the terms of intercourse between the two countries, although it professes to be based on strict reciprocity.

In reference to the affidavits and correspondence, I beg to state that I strictly cautioned Captain Taylor, as well as his crew, to give a fair dispassionate account of the circumstances connected with the detention of the *Amazon*. The report of the attorney general of Nova Scotia upon this case, to which the letter of the provincial Secretary refers, will, I presume, when received, furnish the defense which may be set up for the conduct of the provincial officer, or point to some means of redress.

I have the honor to be, sir, your most obedient and humble servant.

JAMES PRIMROSE.

The Hon. JOHN FORSYTH,
Secretary of State, Washington.

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[Inclosure No. 1.]

Consul Primrose to Sir Rupert D. George.

CONSULATE OF THE UNITED STATES,
Pictou, Nova Scotia, July 15, 1839.

SIR: I most respectfully beg leave to bring under the notice of the government the existing practice of collecting light-dues at the Strait of Canso.

American vessels bound to Pictou, have this season been frequently fired at and brought to at that place, by an armed boat, and boarded by an officer, armed with a cutlass and a brace of pistols, who has enforced payment of light-dues. As but few of these vessels were provided with funds, the masters have been subjected to great inconvenience by being compelled, in many instances, to part with portions of their cargoes or ship's stores, and to pursue other objectionable courses to enable them to meet the demand, which I respectfully submit might be collected here, where the consignees reside, with as much safety to the revenue, and, as you will perceive by the enclosed affidavits, with less danger to strangers, who are led to commit acts, seriously affecting the safety of their vessels, through the misrepresentation of an officer claiming to be clothed with authority.

Will you do me the favor of informing me whether the collectors of light-dues at the Strait of Canso act under the authority of the government of this province, in levying that rate there on American vessels not bound to any port or place within the same?

The imposition of any tax by the province of Nova Scotia upon American vessels engaged in the prosecution of the fisheries using that passage in transitu, would appear to deprive it of the character of constituting a portion of the high seas.

With the greatest respect, I have the honor to be, sir, your most obedient and humble servant.

JAMES PRIMROSE.
Consul, U. S. A.

To the Honorable Sir RUPERT D. GEORGE.
Provincial Secretary, &c., Halifax.

[Inclosure No. 2.]

E. G. Adams, master of the American brig *Orleans*, of Portsmouth, maketh oath and saith: That on the 10th day of June, now last past, he was at the Gut of Canso, in said vessel, (bound to Pictou for a cargo of coal,) when the *Orleans* was boarded by Duncan McMillan, collector of light-dues, who demanded payment of light-money. Deponent told said McMillan that he had not a sufficient sum of money on board to pay it; that he was bound to Pictou, where he would get money, and where he expected to pay all his port charges. McMillan, however, insisted on being paid, and told deponent if he had no money he must pay out of the ship's stores; on which deponent, at the request of said McMillan, gave him a barrel of flour, in part payment, having no other means of satisfying the demand.

E. G. ADAMS.

Sworn to at Pictou, the 6th July, 1839, before me.

JAMES PRIMROSE,
Consul, U. S. A.

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[Inclosure No. 3.]

Nathan Briggs, master of the American schooner, *Alatamaha*, of New Bedford, maketh oath and saith: That on the 19th day of June last past, while said vessel was passing through the Gut of Canso, bound to Pictou for a cargo of coal, Duncan McMillan, collector of light-dues, came on board and demanded to see the *Alatamaha's* papers, and required payment of light-dues. Deponent said he had no money, but would give an order on Pictou. McMillan looking at the clearance said, "You have no means of paying me on board," and requested deponent to give him a barrel of flour for light-dues. Deponent made answer that he could not break bulk without subjecting himself to a penalty; on which McMillan replied that there was no duty payable on any article delivered to him in payment of light-dues. Deponent believing from the circumstance of a British flag flying in McMillan's boat, that he was an officer of government, and had a right to make such demand, gave him a barrel of flour, and took a receipt therefor, of which the following is a copy, viz:

"JUNE 19, 1839.

"*Mr. Nathan Briggs, master of the schooner Alatahama, To the Province of Nova Scotia, Dr.*

"To light-dues for the above vessel, now under your command, for the present voyage from New Bedford, 120 tons.

"Received payment in one barrel of flour.

"DUNCAN MCMILLAN,
"*Collector of Light-dues, Gut of Canso.*"
NATHAN BRIGGS.

Sworn to at Pictou, the 6th July, 1839, before me,
JAMES PRIMROSE, *Consul, U. S. A.*

[Inclosure No. 4.]

Sir Rupert D. George to Consul Primrose.

HALIFAX, *August 21, 1839.*

Sir Rupert D. George presents his compliments to Mr. Primrose, and regrets not being yet able to reply to his communication relative to the mode of collecting light-dues from American vessels passing through the Gut of Canso. Immediately on its receipt, it was laid before the lieutenant governor and her Majesty's council, and referred to a committee to inquire into the circumstances; and the committee have not yet made their report.

[Inclosure No. 5.]

Consul Primrose to Sir Rupert D. George.

CONSULATE OF THE UNITED STATES OF AMERICA.
Pictou, August 26th, 1839.

SIR: I beg leave to enclose to you two copies of two affidavits of the master and crew of the American fishing schooner *Amazon*, relating to her seizure and detention by an officer of the provincial government at the Strait of Canso.

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I most respectfully solicit the favor of being informed of the cause of said seizure; and also, if there has been no sufficient reason for the detention of the *Amazon*, as would appear by these affidavits, whether the government of the province will be disposed to grant redress to the parties who have thereby sustained such serious and unmerited injury.

I have the honor to be, sir, your most obedient and very humble servant.

JAMES PRIMROSE,
Consul, U. S. A.

The Hon. Sir RUPERT D. GEORGE,
Provincial Secretary &c., &c., Halifax.

[Sub-inclosure 1.]

Personally came and appeared before me, James Primrose, consul of the United States of America, at Pictou, in the Province of Nova Scotia, George W. Taylor, master of the schooner *Amazon*, of Gloucester, in the State of Massachusetts, in the United States of America; and William Biber, Tobias Nash, James Claney, Edward Claney and John Copeland, all of Gloucester aforesaid, composing the crew of the said vessel; who severally declared that the said vessel having on board fishing stores and supplies, they the said appearers, set sail in her from Gloucester on the 30th day of June now last past, bound to Labrador, to fish for codfish; that the said vessel arrived at the Gut of Canso on the 4th day of July last, and came to anchor there at Steep Creek cove, for the purpose of procuring wood and water; that, on the next day, said appearers took on board said vessel two barrels of water, and two cords of wood; that, thereafter, said vessel remained at anchor there until the morning of Sunday, (the 7th,) on account of the weather being so very foggy that at no time during the said period could appearers discern objects at a distance of thirty or forty yards; that, on the morning of the said 7th, one Duncan McMillan came on board and seized the said vessel, and turned all the said appearers, except the master, on shore in a destitute condition; and the said appearers do severally most solemnly declare that there were no articles on board the said vessel when she left Gloucester aforesaid, but such as are usual and necessary for such voyages; and each appearer, for himself, respectively, declares that no article was sold or delivered from the said vessel, with his individual knowledge or belief, from the time the said vessel sailed from Gloucester aforesaid until she was so seized; nor was any act or thing committed or done by either of the said appearers, respectively, which, to the knowledge of the said appearers, could give any color or pretence for said seizure. And each appearer, for himself, further declares, that, during the time which the said vessel remained at anchor at the said Steep Creek cove, as aforesaid, no person whatever warned or requested him to remove the said vessel therefrom.

GEORGE W. TAYLOR
WILLIAM BIBER
TOBIAS NASH
JAMES CLANEY (his x mark)
EDWARD CLANEY (his x mark)
JOHN COPELAND.

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Sworn to, at Pictou, Nova Scotia, this 26th day of August, 1839, before me.

JAMES PRIMROSE,
Consul of the United States of America.

[Sub-inclosure 2.]

Personally came and appeared before me, James Primrose, consul of the United States of America, at Pictou, in the Province of Nova Scotia, George W. Taylor, master of the schooner *Amazon*, of Gloucester, in the State of Massachusetts, in the said United States, who declared that, in addition to the facts sworn to by him, this day, in a joint affidavit with the crew of the schooner *Amazon*, of Gloucester, relative to the seizure of said vessel at the Gut of Canso, the following circumstances occurred: That on the arrival of the said vessel at the Gut of Canso, on the fourth day of July last, as stated in the said affidavit, one Duncan McMillan, came on board the said vessel, and showed appearer his commission from the government of the province of Nova Scotia as seizing officer and collector of light duties; that the said McMillan demanded from appearer four pence per ton register of said vessel, as light-duty, which appearer paid in silver money, and asked said officer if he could be allowed to take on board wood and water there; to which the said officer replied, that he could take on board as much of both as he wanted, and pay for the wood in goods, if he pleased. It being very foggy, appearer asked if he must leave with his vessel as soon as he got the wood and water on board; to which the said officer replied, that he might stay there as long as he pleased. That the said vessel being detained there by foggy weather for three days, the said officer came on board of her on the morning of Sunday, (the 7th), and seized her, stating to appearer that he had received information that appearer had landed goods; that the said officer turned the crew of the said vessel on shore, and carried her to Arichat, appearer remaining on board by permission of said officer; that, on their arrival at Arichat, the vessel was hauled into a dock, and the cargo landed, examined and put on board again, with the exception of some articles, which, together with the sails of said vessel, were stored; that the said officer, together with four men, remained on board of said vessel at Arichat for four days, and lived on her provisions, although appearer remonstrated against such conduct; but received for answer from the said officer that the vessel now belonged to him. That said appearer, after endeavoring, unsuccessfully, to get his vessel, released at Arichat, proceeded to Halifax, where the United States consul informed him that an order had been sent to McMillan from the government, directing him to release the said vessel; that, on appearer returning to Arichat, he was furnished with the following copy of a letter, said to be addressed to the said McMillan by the attorney general of Nova Scotia:

"ADVOCATE GENERAL'S OFFICE,
"*Halifax, July 24, 1839.*

"SIR: I have read your account of the seizure of the American schooner *Amazon*, and the affidavit enclosed; and, although the conduct of the master appears to have been indiscreet, I cannot see any just grounds for her longer detention; and you will therefore not pro-

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ceed further in this case, but allow the person who may be entitled to receive the vessel. It must be, however, understood by them, that they cannot continue from day to day in our harbors without a sufficient excuse, which I do not find in this case for the unusual delay which led to the seizure.

"I am, sir, your humble servant,

"S. G. W. ARCHIBALD.

"Mr. MCMILLAN, *Guysborough.*"

That the said McMillan refused to release appearer's vessel unless appearer would discharge a bill presented by said McMillan, of which bill the following is a copy:

Captain Taylor, master of the schooner Amazon To Duncan McMillan Dr.

1839.	To sundry attendance on said vessel	£21	10	0
	James Turnbull's fees	1	3	4
	Mr. John Bullam's charges for wharfage, storage &c	7	11	1
	Lauchlin McLean's bill for watching vessel	3	10	0
		£34	14	5

That appearer being reduced to the alternative of paying the demand, or leaving his vessel in the hands of said McMillan, chose the former, and gave a draft on his owners for the amount; on which his vessel and stores were delivered to him by said McMillan, with the exception of a rifle and a musket, which the said officer took possession of, saying to appearer he thought they would get rusty on board the vessel, and he would take care of them; and they were not returned to appearer, although he demanded them from said McMillan. And the said appearer further declares, that the said vessel was detained in the possession of the said officer from the 7th day of July last, until the 21st day of the present month, being forty-five days, which detention has ruined his voyage, deprived the owner of the power of procuring the bounty for the vessel for this season, and, together with the other heavy expenses incurred by appearer, the whole loss to the owners and crew of the said vessel, in consequence of such seizure, cannot amount to less than from two thousand to two thousand five hundred dollars.

Appearer further declares that he paid five dollars in silver money for the two cords of wood referred to in the joint affidavit of himself and crew, of this date, as taken on board his vessel at Steep Creek cove.

GEORGE W. TAYLOR.

Sworn to at Pictou, this 26th day of August, 1839, before me.

JAMES PRIMROSE,
Consul of the United States of America.

[Inclosure No. 6.]

Sir Rupert D. George to Consul Primrose.

PROVINCIAL SECRETARY'S OFFICE.
Halifax, September 3, 1839.

SIR: I have laid before the Lieutenant Governor and her Majesty's Council, your letter of the 26th of August, transmitting copies of two

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affidavits relating to the seizure and detention of the American fishing vessel *Amazon*, by Mr. Duncan McMillan; and am directed to acquaint you that copies thereof have been forwarded to McMillan, who is directed to repair to Arichat on Monday next, in order that his conduct on this occasion may undergo a minute investigation before the attorney general, on the receipt of whose report it will become my duty to address you again on the subject.

I have the honor to be, sir, your most obedient servant,

RUPERT D. GEORGE.

JAMES PRIMROSE, Esq.,
Consul United States, Pictou.

[Inclosure No. 7.]

Consul Primrose to Sir Rupert D. George.

CONSULATE OF THE UNITED STATES OF AMERICA,
Pictou, September 28, 1839.

SIR: It becomes my duty to call your attention to the enclosed copy of an affidavit of the master of the American brig *Emerald*.

The conduct of the collector of light-dues at the Strait of Canso towards vessels of the United States bound to this port, continues to be characterized not only by a total want of courtesy, but very frequently assumes the aspect of open and wanton aggression.

In the hope of receiving your reply to my note of the 15th of July, I have refrained from multiplying complaints; but the nature of the outrage committed on the *Emerald* requires that I should make the government of this Province acquainted with it.

With great respect, I have the honor to be, sir, your most obedient and humble servant.

JAMES PRIMROSE,
Consul of the United States of America.

Hon. Sir R. D. GEORGE,
Provincial Secretary, &c., Halifax.

[Subinclosure.]

Roderick McKenzie, master of the brig *Emerald*, of Salem, in the State of Massachusetts, in the United States of America, maketh oath and saith: That, on Sunday morning last, the 22d instant, while the said brig was riding at anchor, wind-bound, at the Strait of Canso, on her passage from Boston to Pictou, she was boarded by Duncan McMillan, who demanded to see the ship's papers, which were shown to him by deponent. The said McMillan then demanded from deponent four pence per ton register as light-dues; but deponent informed him that he had not the means of discharging the claim there, but would pay it at Pictou.

McMillan then requested deponent to give him an order on some person at Pictou, which deponent declined to do, saying there was no person there on whom he had any authority to draw. McMillan then left the vessel. About six hours afterwards, when the said vessel was under sail for Pictou, she was boarded by three armed boats, containing about sixteen men, and taken posession of by the said McMillan, but was released on deponent's signing a note-of-hand,

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payable to the said McMillan or his order on demand, for the amount of the light duty.

RODERICK MCKENZIE.

Sworn to at Pictou, this 24th day of September, 1839, before me,

JAMES PRIMROSE,
Consul of the United States of America.

[Inclosure No. 8.]

Sir Rupert D. George to Consul Primrose.

PROVINCIAL SECRETARY'S OFFICE,
Halifax, September 30, 1839.

SIR: I have the honor to acknowledge the receipt of your letter of the 26th instant, enclosing a copy of an affidavit of the master of the American brig *Emerald*, relative to the conduct of Mr. Duncan McMillan, collector of light-dues in the Gut of Canso.

Various other complaints against this person having been made to the Lieutenant Governor, the attorney general is directed to inquire minutely into them; and as McMillan may be hourly expected here, I hope to be soon able to reply to the several communications which it has been your duty to address to me on the subject of his alleged misconduct.

I have the honor to be, sir, your most obedient, humble servant,

RUPERT D. GEORGE.

JAMES PRIMROSE, Esq.,
Consul of the United States of America, Pictou.

Consul Primrose to Mr. Forsyth.

(No. 14.) CONSULATE OF THE UNITED STATES,
Pictou, November 18, 1839.

SIR: I have the honor to acknowledge the receipt of your letter of the 1st ultimo, and to transmit herewith a copy of a letter which I have just received from the Secretary of this province on the subjects which I brought under your notice in my last communication to you, dated the 10th ultimo.

Vessels of the United States trading to this port have paid upwards of $2,800 for "light-dues" during the present year; the aggregate of the tax is greatly increased from the circumstances of its being also collected each voyage from all American fishing vessels (and they are very numerous) using the passage of Canso strait. The claim set up by the province of Nova Scotia, of an exclusive right to the Strait of Canso, is deserving of consideration. If this claim be admitted, the provincial government may at any time impose such restrictions on its navigation as would amount to a prohibition of its use as a commodious access to the fishing grounds in the Guf of St. Lawrence.

In my letter to you (no. 11,) dated the 11th March last, I anticipated the difficulties which the fishermen have subsequently experienced

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upon the coasts of this province. There can be no doubt that some of them were fairly chargeable with infringement of the treaty; I think it equally certain that the excess of zeal displayed by some of the provincial officers in the exercise of their authority, has in certain cases led to unwarranted interference with the rights of the American fishermen, and the liberty of their vessels. I think it is absolutely necessary for their protection that there should in future be at least one small vessel of war commissioned to cruise on the fishing grounds during the summer months, commanded by an active and experienced officer, qualified by prudence and firmness to caution the fishermen against all violation of the treaty, and to guard them vigilantly from every improper molestation.

I have the honor to be, sir, your most obedient and humble servant,

JAMES PRIMROSE, *Consul.*

Hon. JOHN FORSYTH,
Secretary of State, Washington.

[Inclosure.]

Sir Rupert D. George to Consul Primrose.

PROVINCIAL SECRETARY'S OFFICE,
Halifax, November 9, 1839.

SIR: The attention of the Lieutenant Governor and her Majesty's Council having been directed, by your letters of the 15th July and 26th September last, to the mode of collecting light-duties from American vessels in the Gut of Canso, that subject has received the best consideration of the board; and I am directed to acquaint you, with reference to the particular cases which you have brought under his Excellency's notice, that the taking of merchandise or ship's stores, instead of money, in payment of light-duty, (as in some few cases appears to have been done,) is, under any circumstances, unauthorized on the part of the collector. The collectors have accordingly been informed that such a proceeding is irregular and unlawful, and must on no account be hereafter resorted to; and it has been further intimated to them, that when the light duty has been incurred, and its payment after demand has been refused or neglected, the vessel is liable to seizure; but that the law does not give warrant for the use of violence in bringing vessels to in cases where no previous demand has been made; and that the exhibition of fire-arms, while in the performance of their office, is highly reprehensible. The collectors are also instructed not to demand light-duty from vessels bound to Pictou, unless they come to anchor in the strait.

With respect to the concluding paragraph of your letter of the 15th of July, I have it in command to remark that his Excellency cannot admit the character given to the Gut of Canso as a part of the high seas until recognized by some authoritative decision, as the correctness of its application to that narrow passage lying entirely between the lands of this province may be questionable, more especially as an open communication around the eastern end of the island of Cape Breton is to be found on the high seas to the Gulf of St. Lawrence, or any other point to which the Strait of Canso can be made subservient.

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I take this opportunity to state that the case of the American schooner *Amazon*, which was the subject of your letter of the 26th of August, remains under consideration; all the information with respect to it, which is desired, not having been yet obtained.

I have the honor to be, sir, your most obedient, humble servant,

RUPERT D. GEORGE.

JAMES PRIMROSE, Esq.,
American Consul.

Lieutenant Paine, commanding "Grampus," to Mr. Forsyth.

WASHINGTON, *December 29, 1839.*

SIR: In my late cruise on the coasts of her Britannic Majesty's provinces, I found the convention of 1818, on the subject of fisheries, so variously construed, that I deemed it proper to address the Navy Department on the subject—the letters to which I alluded in conversation with you.

Avoiding unnecessary repetitions, I will endeavor to give, in the following, all that seems of importance in a more concise form.

I visited the seat of government of Nova Scotia, and that of Prince Edward's Island, and St. John's, the principal city of New Brunswick, where I communicated with the principal government officers, with our consuls, with Admiral Sir Thomas Harvey, and the commander of the British vessels of war with whom I met; as also with the collectors of Portland and Eastport, Maine, and such other persons as from their situations seemed qualified to impart information on the questions arising.

I had believed the vessels seized had been generally guilty of systematic violation of the revenue laws; but I was soon led to suspect that this was not the cause, so much as a pretence, for seizing.

A vessel once seized must be condemned, unless released as a favor; because the owners will not claim her under the present laws of Nova Scotia, where the only seizures have taken place.

The questions on which dispute may arise, are—

1st. The meaning of the word *bay*, in the convention of 1818, where the Americans relinquish the rights before claimed or exercised, of fishing in or upon any of the coasts, bays, &c., of her Britannic Majesty's provinces, not before described, nearer than three miles.

The authorities of Nova Scotia seem to claim a right to exclude Americans from all bays, including those large seas such as the Bay of Fundy and the Bay of Chaleurs; and also to draw a line from headland to headland; the Americans not to approach within three miles of this line.

The fishermen, on the contrary, believe they have a right to work anywhere, if not nearer than three miles to the land.

The orders of Admiral Sir Thomas Harvey, as he informed me, are only to prevent their fishing nearer than three miles.

According to this construction, Americans may fish in the Bay of Fundy, Bay of Chaleurs, and the Bay of Miramichi; while their right would be doubtful in Chedabucto bay, and they would be prohibited in the other bays of Nova Scotia.

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On that part of the coast of Newfoundland where the right of fishing is relinquished, there are several bays in which fisheries may be prosecuted at three or more miles from the land.

On that part of the coast of Newfoundland where the right of taking and curing fish is secured by the convention of 1818, it is to be feared that troubles may arise with the French, who assume an exclusive right, and who have gone so far as to drive off even English fishermen.

The right of fishing on the shores of the Magdalen islands, though sometimes questioned, seems so secured by the convention of 1818 that I think it unnecessary to lengthen this communication by further discussing it.

2d. The right of resorting to ports for shelter, and to procure wood and water. The provincial authorities claim a right to exclude vessels, unless in actual distress; and the subordinates, as well as the naval forces of her Majesty, warn, as they term it, vessels to depart, or order them to get under weigh and leave a harbor when they suppose a vessel has lain a reasonable time; but this is often done without examining or knowing much of the circumstances under which the vessel entered, or how long she has been in port.

The English men-of-war also endorse the papers of the fishermen, as if they had violated the blockade, or committed some other illegal act.

The fishermen claim a right, under the convention, to resort to the ports for shelter whenever from rough weather, calms or fogs, they cannot prosecute, without risk or inconvenience, their labors at sea; and the navigation on some parts of the coast is, on account of the extraordinary tides, as perilous in calms and fogs as in rough weather.

The Nova Scotia courts would exact that American fishermen shall have been supplied, on leaving home, with wood and water for the cruise; but the Americans believe they can, by the terms of the convention, resort to the ports to procure wood and water at their convenience during the cruise; and they do not, on account of the inconvenience, as well as the high price, take on board either water-casks or wood for the whole cruise.

If the grounds assumed by the British provincial authorities be carried out, it will be in their power to drive the Americans from those parts of the coast where are some of the most valuable fisheries; whereas, if the ground maintained by the Americans be admitted, it will be difficult to prevent their procuring articles of convenience, and particularly bait; from which they are precluded by the convention, and which a party in the provinces seems resolved to prevent.

The questions will, I doubt not, ere long be brought to a crisis; and it seems probable that the vexatious course pursued towards the fishermen, with the object of fostering their own at the expense of our fisheries, and the care taken by the French to protect and encourage theirs, will tend to injure, perhaps destroy those of this country; a result to be deprecated in connexion with the navy, for there is no branch of commerce which supplies so large a portion of hardy and efficient seamen.

Although several of the vessels seized by authority of the province of Nova Scotia were afterwards released, the great expense incurred and the time they were detained made the injury to the owners nearly equal to a total loss.

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The person who made the most of these seizures, (a Mr. Darby, who commands a chebacco boat, with ten or twelve men armed with muskets,) is prompted, as well by his interest as by a certainty of impunity, to seize all he can find.

The law of this province, entitled William IV., chap. viii, 1836, which seems solely intended to persecute our fishermen, could only have been approved by orders in council through an oversight.

It is not possible that Great Britain intends, when the property of citizens of a nation in amity is seized on false pretences, or with no pretence, to force the lawful owner to give heavy bonds, liable to be forfeited, in addition to vessel and cargo, before he can claim his property.

To give a month's notice to the seizing officer; the notice to contain every thing intended to be proved against him, before a suit can be instituted; and, again, to prove that the notice has been given:

To force the owner to bring his action or claim within three months—one of which is expended in thus giving notice, and the other two may well expire, owing to the infrequency and uncertainty of communications, before the distant owner can transfer funds and give the requisite bonds to precede his suit, or lay claim to his illegally seized property, which property will thus be condemned by default:

To force the owner, if he cannot prove the illegality of the seizure, to pay treble costs:

To screen the officer seizing, by providing that, if the judge shall say there was probable cause, he shall be liable to no prosecution; the plaintiff only entitled to 2d. damages; the defendant only liable to costs.

The whole of this act, and the proceedings on the subject, as detailed in the Journals of the Assembly, display an unfriendly disposition towards Americans, or rather a determination to quarrel or drive them from the exercise of rights secured by solemn treaty.

The injustice and annoyance suffered by the fishermen have so irritated them, that there is ground to believe that violence will be resorted to, unless some understanding be had before the next season.

As the facts relating to these seizures have been reported to the government by Messrs. Consuls Morrow, of Halifax, and Primrose, of Pictou, I have confined myself to such a representation of the grounds assumed as may be useful in judging of the danger of serious difficulty, which has seemed to me considerable.

There is another law of this province unjust towards foreigners, and likely to be injurious to Americans. It relates to passenger-vessels which may be forced from any cause to make a harbor, and is entitled 1st Victoria, 1839, chapter xlv., sections 3 and 5.

If any of the passengers please, they may remain on shore, and the vessel will not be cleared until bonds are given to the amount of £50 for each person so remaining that they shall not become chargeable to the community; and this, while the captain is willing or desirous of finishing his contract by conveying them to their destination.

At Prince Edward's Island, the schooner, *Three Brothers*, of Belfast, having met with some injury by grounding, commenced lightening; but the captain was advised to apply for permission, and did so; the permission was refused, and the articles landed (some barrels of salt) were seized.

This was afterwards ordered to be restored to the owners, but had already been sold; and the proceeds are now in the hands of the

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collector of customs at Charlottetown, subject to the orders of the honorable the board of customs in London, and cannot be claimed by the owners without first entering into bonds—probably ten times the amount of the salt seized.

I believe that a consul, to reside at Charlottetown, with the usual power of appointing agents, would be a means of preventing future difficulties; the only intercourse with the authorities now being through a consular agent appointed by Consul James Primrose, of Pictou, in another province.

I have the honor to subscribe myself, with high respect, your obedient servant.

JNO. S. PAINE,
Lieut. Comd'g U. S. schooner Grampus.

Hon JOHN FORSYTH,
Secretary of State.

Consul Primrose to Mr. Forsyth.

[Extract.]

CONSULATE OF THE UNITED STATES,
Pictou, March 24, 1840.

SIR: * * * I have received no further reply to my application to the Government of this Province, respecting the detention of the *Amazon*, than that contained in the letter of the provincial Secretary dated the 9th November last.

The (as I apprehend it) unjustifiable detention of that vessel led, not only to the destruction of her intended voyage, but, as I am informed, to her total loss in a gale on the coast of Cape Breton, soon after she was released.

During the past season I heard of several similar causes of complaint as having occurred in my consulate; but as I had not the means of authenticating them, I refrained from making them the subject of communication to your department.

I feel bound, however, to state as my belief, that, although there may have been good grounds for the condemnation of some vessels, for infringement of the convention of 1818, there has also been, on the part of some of the subordinate officers of the provincial government during the past season, not a little improper interference with the rights of the American fishermen; and, judging from the manner in which the subject has been taken up by the legislature of this Province, now in session, I fear that a repetition of such acts is more likely to be overlooked then reprehended by the provincial authorities.

* * * * * * *

Consul D'Wolf to Secretary Forsyth.

CONSULATE U. S. AMERICA,
Sydney, C. B., August 18, 1840.

SIR: I have to inform you that the fishing schooner "*Pallas*"[a] of Gloucester, Mass, Edward Haskell, Master, and owned by himself

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[a] This vessel was afterwards released.

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and others at Gloucester, having a crew of six men, has been captured by the cruiser "*Louise Wallace*", Forrester, Commander, for an alleged violation of Treaty, and brought into this Port.

The verbal statement of Capt. Haskell, in relation to the matter, and which is fully corroborated by the crew of the "*Pallas*" is as follows—

The "*Pallas*" sailed from Gloucester on 28th July last, on a fishing voyage, and on 4th of the present month, when off the Highlands of Chetecam, on the northwestern side of the Island of Cape Breton, and distant nearly or quite four miles from the shore, a small schooner, apparently a fisherman, lying under the land, was seen to make sail and approach them. Not suspecting her character, she shewing no flag and making no signal, the "*Pallas*" pursued her course toward the Magdalen Islands, whither she was bound, and it was not until after several hours that they were made aware of the intentions of the other vessel, which now hoisted the English flag and fired two guns in quick succession. The "*Pallas*" then hove to, and the other schooner, soon coming up, boarded and without resistance, took possession. The vessel proved to be the "*Louisa Wallace*", Forrester, Commander, with a crew of eleven men, to which vessel, the crew of the "*Pallas*" with two exceptions were now transferred. The two vessels were, at this time, off the "Magdalen Islands" and sixty miles, or thereabouts from any part of the coast of the Province of Nova Scotia.

The evidence, relied upon to justify the seizure is that, given by two men, belonging to the latter, who, it appears, were sent out in a boat to watch the movements of the "*Pallas*". They state that one or more of the crew of the "*Pallas*" were observed to let down their lines, over the side of the vessel, and draw them in again but do not pretend that any fish were taken. It is also assumed that she was within three miles of the land.

On the other hand, Capt. Haskell and crew, solemnly deny that any line was put out from the "*Pallas*" and affirm that in their judgment and belief, they were considerably more than a league from the shore, most of them estimating the distance to be four miles.

Such was the nature and amount of evidence upon which the "*Pallas*" was seized and brought into this Port; the sails unbent, and the crew discharged; and such is the proof, by which it is now sought to condemn the vessel.

As the matter is to be adjudicated at Halifax, I immediately despatched Capt. Haskell and two of his men to that place that they might, in person, give evidence as to the facts, and if possible, prevent the case going into the Court of Admiralty, as in this event, great expense and long detention must, at least, be the result; and believing it to be important that they should reach Halifax before any proceedings were commenced, I did not detain them to take their affidavits in form here. I furnished Capt. H. with such letters as will enable him to avail himself of the best legal advice. Should he, however, procure the release of his vessel, the Laws of this Province are such, as will, I am informed, render it impossible for him to obtain any redress for the injury and loss sustained by her capture and detention, and to that fact I would respectfully ask leave to call your attention as, in all probability, other American vessels will be cap-

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tured under pretences as slight and untenable as in the present instance.

I am, etc.,

JOHN I. D'WOLF,
U. S. Consul.

Hon. JOHN FORSYTH,
Secretary of State.

P. S. I have to acknowledge the receipt of your letter of July 1st with documents. J. I. D'W.

Consul D'Wolf to Secretary Forsyth.

CONSULATE U. S. AMERICA,
Sydney, C. B., Sept. 7, 1840.

SIR: I have to acquaint you with the capture of the American fishing schooner "*Ocean*", D. Dixon, Master, owned in Newburyport, by Harrison Johnson, Esq. for an alleged trespass on the fishing ground.

This vessel was brought into port on 2nd instant by the cruiser "*John and Louisa Wallace*", Stephens, Commander. I have taken the affidavit of the mate and two of the crew, setting forth the circumstances under which the vessel was seized and enclose a copy of the same.

I have every reason to believe that the schooner was six or seven miles from the land at time she was taken. The distance to the shore was not measured and the land being very high in that part of the coast, renders it impossible to form a correct judgment.

In addition to this, Capt. Stephens of the cutter, is known to be a man of intemperate habits and wholly unfit to occupy the responsible situation in which he is placed, and I am well satisfied from the statement of Capt. Dixon and his crew, that he was under the influence of intoxicating drink at the time the seizure was made. His opinion, therefore, as to the distance, would not seem entitled to much weight.

And further, by an examination of the best charts, I find that soundings on that part of the coast where the vessel was taken are less than 20 fathoms, within six or seven miles of the land.

Capt. Dixon has, by my direction, proceeded to Halifax to endeavor to effect the release of his vessel.

The "*Pallas*", the capture of which vessel was made the subject of a former letter has been released, the Captain, however, having been subjected to heavy expenses.

I am, etc.,

JOHN I. D'WOLF,
U. S. Consul.

Hon. JOHN FORSYTH,
Secretary of State.

[Inclosure.]

CONSULATE, U. S. AMERICA,
Sidney, C. Breton.

On the day and date hereof, before me, John I. D'Wolf, U. S. Consul, personally appeared Ebenezer Bray, mate of the American fish-

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ing schooner "*Ocean*" of Newburyport, seized and brought into this port by the latter "*John and Louisa Wallace*", Stephens, Commander, for an alleged trespass on the finshing grounds, and George Norman and Stephen Knowles, seamen on board said vessel, who being solemnly sworn, do depose and say—

"That on 30th June last we sailed in the schooner "*Ocean*" from the port of Newburyport, on a fishing voyage; that on Monday, 30th day of August, we determined to put into the harbour of Cheticamp (this being the nearest harbour with which we were acquainted) for a supply of wood and water, having but about one foot of wood on board and two barrels of water, we accordingly directed our course toward Cheticamp, and the wind being light in the evening and a strong current setting against us, we thought it best to come to anchor. In order to ascertain of what length to make our buoy rope, we *sounded* and found just twenty fathoms. Immediately after this, we dropped anchor, and at this time judged ourselves to be at least five miles from the land. Laid at anchor during that night. At ½ past four A. M. next day, turned out the cook to get breakfast. At about five were called to eat our breakfast. After this meal, went on deck and commenced heaving up anchor, and at this time perceived a boat approaching us from the shore which soon came alongside. Seven or eight men were in the boat, who boarded and took possession of our vessel. At this time, two mackerel and a codfish were lying in the tubs on deck, having been caught by the cook, previous to our coming on deck, and before any of the crew had turned out of their berths. Sail was now made on the vessel and she was taken to Cheticamp harbour where we were transferred to the latter "*John and Louisa Wallace*". We then proceeded, by order of Capt. Stephens, to Sydney where we arrived on the 2nd instant. The sails of the "*Ocean*" were immediately unbent and we were ordered on shore.

(Signed) EBENEZER BRAY, *Mate.*
GEORGE W. NORMAN } *Seamen.*
STEPHEN KNOWLES }

A true copy from the Records of my office.

(Signed) JOHN I. D'WOLF,
U. S. Consul.

Mr. Primrose to Mr. Forsyth.

CONSULATE OF THE UNITED STATES,
Pictou, 21st September, 1840.

The Honorable JOHN FORSYTH,
Secretary of State, Washington,

SIR: I beg to inform you that the fishing Schooner *Alms*, one year old, of the burthen of 48 tons, belonging to Thomas Hardy of Essex, Massachusetts, and commanded by Captain Samuel L. Fears, was seized by Captain Darby of this Provincial Government Schooner *Victory*, on Friday the 11th instant, off Mabou, in the Island of Breton, while lying to, about two miles from the land, where she had run in for shelter during a blow from the South West. The circumstances attending this seizure have been related to me by Capt. Fears,

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as follows: Capt. Darby went on board the *Alms* and looked at the fish, bait, and lines, and remarked that the fish had been recently caught; Capt. F. informed him that they had caught some of them that morning, about seven miles from the land, and that they had taken none nearer the shore than seven miles. Capt. Darby notwithstanding sent two men on board the *Alms*, ordered two of her crew on board the *Victory*, and directed Capt. Fears to follow him into Port Hood, where Capt. Darby detained the *Alms* some days in custody, and subsequently carried her to Guysboro' and there took absolute possession of her and stripped her.

Capt. Fears informs me that at the time of the seizure all the fish on board were split and salted, and there was no appearance on board the *Alms* to warrant a supposition that she had been fishing where she then lay.

Capt. Fears has gone to Halifax to endeavour to have the *Alms* released, and I have referred him to the Consul there for advice and Assistance.

I have the honor to be, Sir, your most obt. servant,

JAMES PRIMROSE, *Consul.*

Mr. Primrose to Mr. Forsyth.

CONSULATE OF THE UNITED STATES,
Pictou, 25th November, 1840.

The Honourable JOHN FORSYTH,
Secretary of State, Washington.

SIR: I have the honor to acknowledge the receipt of your circular under date of the 30th July last, with a Copy of the Act therein referred to; and also your letter dated the 1st Ultimo, accompanied by a Copy of the Acts and Resolutions passed at the first Session of the 26th Congress.

Mr. Tremain having left Prince Edward Island I have appointed Henry Palmer of Charlotte Town to succeed him as Consular Agent there.

I have just been able to procure a Copy of the Journal and Proceedings of the House of Assembly of this Province at its Session 1839–40, and I beg leave to forward it to you herewith.

The subject of the fisheries has occupied a large share of the attention of the Assembly, and I beg your reference to Page 848 of the Journal, and to Pages 212 & 220 of the Appendix, for the result of their deliberations thereupon. These documents possess considerable interest but, more particularly that part of the Assembly's interpretation of the Convention of 1818, by which it asserts that the prescribed distance of "three marine miles," therein expressed, is to be measured from the head Lands, and not from the shores of the Provinces; And that the Strait of Canso cannot be passed by Fishing vessels of the United States, without their approaching within the waters reserved for the exclusive use of British Subjects, and violating the letter and Spirit of the treaty of 1818.

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In the address to the Queen (Page 848) the Strait of Canso is said to be "a narrow strip of water completely within and dividing several Counties of this Province."

The Strait of Canso separates Nova Scotia proper from the Island of Cape Breton, and has heretofore been an undisputed thoroughfare for all vessels passing into and out of the Gulf of Saint Lawrence. It is true that the Island of Cape Breton is at present comprehended in the Government of the Province of Nova Scotia, to which it was annexed in the year 1820; but in 1818, at the date of the Convention with Great Britain, Cape Breton was a Colony enjoying a government of its own, entirely distinct from this Province, the Strait of Canso forming the line of demarcation between them. The new annexation of the Island of Cape Breton to the Province of Nova Scotia, could not fairly be construed as vesting in the latter a right to shut up a passage which had since 1783 been freely and without dispute, used by the Americans, as the chief access to the fishing grounds in the Gulf of Saint Lawrence. I cannot conceive how its passage can now possibly be construed into a violation of the Treaty of 1818; for although the United States thereby renounced the liberty to take, dry or cure fish, within three marine miles of the shores of Nova Scotia, it surely will not be contended that their fishing vessels, proceeding to, or returning from the fishing grounds, may not be *navigated*, on the shores of this Province, within the waters reserved for British fishing, at any time when such navigation may be rendered subsequent to the more favourable prosecution of their respective voyages.

The fact, that American fishermen do frequently fish in prohibited waters, will not now admit of a doubt; but it is equally certain, that under the present restrictive system of this Province, many of the innocent are frequently made to suffer, and are left without redress. On looking at the nature of the law and regulations under which seizures are made—the inducements to excite the cupidity of the seizors, and their almost entire irresponsibility, leave no room for astonishment at the above circumstances: but although Nova Scotia may by enactments shelter its officers from consequences, it cannot absolve its government from liability for injuries committed under cover of its authority.

The great evil arising out of almost indiscriminate seizure of American fishing craft on the coasts of the Provinces, would probably be best checked by demand on the British Government for ample remuneration to all parties sustaining injury through the improper interference of the provincial authorities.

I have received no reply (nor do I expect a satisfactory one) to any application to the Provincial Secretary respecting the detention of the *Amazon*. I shall not interfere further in this matter without instructions from your Department, in case I should embarrass any proceedings which you may find it necessary to adopt on the subject. I enclose a copy of a note addressed by me to Sir Rupert C. George on the 21st July last to which I have received no answer.

I have the honour to be Sir, Your most obedient and humble servant,

JAMES PRIMROSE, *Consul.*

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Mr. Forsyth to Mr. Stevenson.

(No. 89.) DEPARTMENT OF STATE,
Washington, February 20, 1841.

SIR: At the time of addressing you the instructions numbered 71, of 17th of April last, relating to the interruptions experienced by the vessels of our citizens employed in intercourse with the ports of Nova Scotia, and in the prosecution of the fisheries on the neighboring coasts, it was deemed expedient, before presenting through you the latter branch of the subject to her Majesty's government in a formal manner, to await the communication to this department of a case in which the details of the seizure—the grounds on which it was made, and the consequent judicial and other proceedings should be fully set forth. Several cases of seizures and detention have, as was apprehended, occurred since the date of my letter, but none of those reported to the department have been presented in a form to fulfill the expectation entertained that the government would be enabled to found upon it a specific complaint against the conduct of the local authorities, whilst protesting against the injurious operation of provincial law upon American interests brought involuntarily and unjustly within its jurisdiction.

The first article of the convention of 1818, between the United States and Great Britain, which contains the treaty stipulations relating to the subject, is so explicit in its terms that there would seem to be little room for misapprehending them; and indeed it does not appear that any conflicting questions of right between the two governments have arisen out of differences of opinion between them regarding the intent and meaning of this article. Yet in the actual application of the provisions of the treaty, committed on the part of Great Britain, to the hands of subordinate agents, subject to and controlled by local legislation, difficulties growing out of individual acts have sprung up from time to time, and of these, perhaps the most grave in their character, are the recent seizures of American vessels, made, it is believed, under color of a provincial law, entitled William IV., chap. 8, 1836, enacted doubtless with a view rigorously to restrict if not intended directly to aim a fatal blow at our fisheries on the coast of Nova Scotia.

From the information in the possession of the department, it appears that the provincial authorities assume a right to exclude American vessels from all their bays, even including those of Fundy and Chaleurs, and to prohibit their approach within three miles of a line drawn from headland to headland.

These authorities also claim a right to exclude our vessels from resorting to their ports unless in actual distress, and American vessels are accordingly warned to depart or ordered to get under weigh and leave a harbor whenever the provincial custom-house or British naval officer supposes, without a full examination of the circumstances under which they entered, that they have been there a reasonable time.

Now, by the convention above referred to, American fishermen are forever secured in their right to take, dry, and cure fish on the coasts of the Magdalen islands and of Newfoundland and Labrador, within certain defined limits, and the United States renounced forever any

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liberty before enjoyed by their citizens of fishing within three marine miles of any coasts, bays, &c., of the British domains in America not included within those limits, and retain for their vessels the privilege (under the restrictions therein named,) of entering such bays or harbors for the purposes of shelter, and of repairing damages therein, of purchasing wood, and of obtaining water.

Our fishermen believe, and they are obviously right in their opinion, if uniform practice is any evidence of correct construction, that they can with propriety take fish anywhere on the coasts of the British provinces, if not nearer than three miles to land, and resort to their ports for shelter, wood, water, &c.; nor has this claim ever been seriously disputed, based as it is on the plain and obvious terms of the convention, whilst the construction attempted to be put upon that instrument by the authorities of Nova Scotia is directly in conflict with its provisions, and entirely subversive of the rights and interests of our citizens. It is one which would lead to the abandonment, to a great extent, of a highly important branch of American industry, and cannot for one moment be admitted by this government.

I am instructed by the President to convey to you his desire that, on the receipt of this letter, you immediately address a representation of the whole subject to her Majesty's government, earnestly remonstrate against the illegal and vexatious proceedings of the authorities of Nova Scotia towards our fishermen, and request that measures be forthwith adopted by her Majesty's government to remedy the evils arising out of this misconstruction, on the part of the provincial authorities, of their conventional obligations, and to prevent the possibility of the recurrence of similar acts.

It is important that this subject should be acted upon without delay, as in the House of Assembly of Nova Scotia, at the session of 1839–'40, an address to the Queen was voted, suggesting the extension to the adjoining British colonies, of rules and regulations relating to the fisheries similar to those in actual operation in that province, which have proved so onerous to American fishermen, and efforts, it is understood, are still making to induce the other colonies to unite with Nova Scotia in her restrictive system. Some of the provisions of her code, supposed to be substantially the same with those of the provincial law above referred to, are of the most extraordinary character. For instance, a foreign vessel preparing to fish within three miles of the coast of her Majesty's dominions in America, is, together with her cargo, to be forfeited; in cases of seizure the owner or claimant of the vessel, &c., to be held to prove his innocence or pay treble costs; he is forced to try his action within three months; to give a month's notice to the seizing officer, which notice must contain everything intended to be proved against him, before a suit can be instituted; and also to prove that the notice has been given. The seizing officer is almost wholly irresponsible, since he is liable to no prosecution; if the judge certify that there was probable cause, and the plaintiff in such suit, if he be successful, is only entitled to two pence damages without costs, the defendant to be fined not more than one shilling, &c., &c. In short, some of these rules and regulations are violations of well established principles of the common law of England and of the principles of all just powers and all civilized nations, and seem to be expressly designed to enable her Majesty's authorities, with perfect impunity to

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seize and confiscate American vessels, and to embezzle, almost indiscriminately, the property of our citizens employed in the fisheries on the coasts of the British possessions.

In pointing out to her Majesty's government the points in these regulations which have proved or are likely to prove most injurious and oppressive in their practical operation on the interests of the citizens of the United States, it will also be proper to notice the assertion of the provincial legislature, that the Strait of Canso is a "narrow strip of water completely within and dividing several counties" of the province, and that our use of it is in violation of the convention of 1818. That strait separates Nova Scotia from the island of Cape Breton, which was not annexed to the province until 1820. In 1818, Cape Breton was enjoying a government of its own entirely distinct from Nova Scotia, the strait forming the line of demarcation between them, and being then, as now, a thoroughfare for vessels passing into and out of the Gulf of St. Lawrence. The union of the two colonies cannot be admitted as vesting in the province the right to close a passage which has been freely and indisputably used by our citizens since the year 1783, and it is impossible to conceive how the use, on our part, of this right of passage, common it is believed to all other nations, conflicts either with the letter or the spirit of our treaty obligations.

I transmit to you enclosed a printed House document (No. 186) of last session of Congress, and also a copy of the journal and proceedings of the House of Assembly of Nova Scotia at its session of 1839–40, both of which will be useful to you in the examination of the subject to which this letter relates.

I am, sir, your obedient servant,

JOHN FORSYTH.

A. STEVENSON, &c., &c., &c.

Mr. Stevenson to Lord Palmerston.

32 UPPER GROSVENOR STREET,
March 27, 1841.

The undersigned, Envoy Extraordinary and Minister Plenipotentiary from the United States, has the honor to acquaint Lord Viscount Palmerston, her Majesty's Principal Secretary of State for Foreign Affairs, that he has been instructed to bring to the notice of her Majesty's government, without delay, certain proceedings of the colonial authorities of Nova Scotia, in relation to the seizure and interruption of the vessels and citizens of the United States engaged in intercourse with the ports of Nova Scotia, and the prosecution of the fisheries on its neighboring coasts, and which, in the opinion of the American government, demand the prompt interposition of her Majesty's government. For this purpose the undersigned takes leave to submit to Lord Palmerston the following representation:

By the first article of the convention between Great Britain and the United States, signed at London, on the 20th of October, 1818, it is provided: "1st. That the inhabitants of the United States shall have forever, in common with the subjects of Great Britain, the liberty to take fish of every kind on that part of the southern coast of Newfoundland, from the said Cape Ray to the Rameau islands; on the western and northern coast of Newfoundland, from the said

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Cape Ray to the Quirpon islands; on the shores of the Magdalen islands; and also on the coasts, bays, harbors and creeks from Mount Joly, on the southern coast of Labrador, to and through the straits of Belleisle, and thence northwardly indefinitely along the coast, without prejudice, however, to the exclusive rights of the Hudson Bay Company. 2ndly. That the American fishermen shall also have liberty forever to dry and cure fish in any part of the unsettled bays, harbors and creeks of the southern portion of the coast of Newfoundland before described, and of the coast of Labrador; the United States renouncing any liberty before enjoyed by their citizens to take fish within three marine miles of any coasts, bays, creeks or harbors of the British dominions in America not included within the above limits, i. e. Newfoundland and Labrador. And 3rdly. That American fishermen shall also be admitted to enter such bays or harbors for the purpose of shelter and of repairing damages therein, and also of purchasing wood and obtaining water, under such restrictions only as might be necessary to prevent their taking, drying or curing fish therein, or abusing the privileges reserved to them." Such are the stipulations of the treaty, and they are believed to be too plain and explicit to leave room for doubt or misapprehension, or render the discussion of the respective rights of the two countries at this time necessary. Indeed it does not appear that any conflicting questions of right between them have as yet arisen out of differences of opinion regarding the true intent and meaning of the treaty. It appears, however, that in the actual application of the provisions of the convention, (committed on the part of Great Britain to the hands of subordinate agents, subject to and controlled by local legislation,) difficulties, growing out of individual acts, have unfortunately sprung up from time to time, among the most important of which have been recent seizures of American vessels for supposed violations of the treaty. These have been made, it is believed, under color of a provincial law of 6 William IV., chapter 8, 1836, passed doubtless with a view to restrict vigorously, if not intended to aim a fatal blow at the fisheries of the United States on the coasts of Newfoundland.

It also appears, from information recently received by the government of the United States, that the provincial authorities assume a right to exclude the vessels of the United States from all their bays, (even including those of Fundy and Chaleurs,) and likewise to prohibit their approach within three miles of a line drawn from headland to headland, instead of from the indents of the shores of the provinces. They also assert the right of excluding them from British ports, unless in actual distress; warning them to depart, or get under weigh and leave harbor, whenever the provincial custom-house or British naval officer shall suppose that they have remained a reasonable time; and this without a full examination of the circumstances under which they may have entered the port. Now, the fishermen of the United States believe (and it would seem that they are right in their opinion, if uniform practice is any evidence of correct construction,) that they can with propriety take fish any where on the coasts of the British provinces *if not nearer than three marine miles to land*, and have the right to resort to their ports for shelter, wood and water; nor has this claim, it is believed, ever been seriously disputed, based as it is on the plain and obvious terms of the convention.

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Indeed, the main object of the treaty was not only to secure to American fishermen, in the pursuit of their employment, the right of fishing, but likewise to insure to them as large a proportion of the conveniences afforded by the neighboring coasts of British settlements, as might be reconcilable with the just rights and interests of British settlements, and the due administration of her Majesty's dominions. The construction therefore, which has been attempted to be put upon the stipulations of the treaty by the authorities of Nova Scotia, is directly in conflict with their object, and entirely subversive of the rights and interests of the citizens of the United States. It is one moreover, which would lead to the abandonment, to a great extent, of a highly important branch of American industry, which could not for a moment be admitted by the government of the United States. The undersigned has also been instructed to acquaint Lord Palmerston that the American government has received information that in the House of Assembly of Nova Scotia during the session of 1839–40, an address to her Majesty was voted, suggesting the extension to adjoining British colonies of rules and regulations relating to the fisheries, similar to those in actual operation in that province, and which have proved so onerous to the fishermen of the United States; and that efforts, it is understood, are still making to induce the other colonies to unite with Nova Scotia in this restrictive system. Some of the provisions of her code are of the most extraordinary character. Among these is one which declares that any foreign vessel *preparing* to fish within three miles of the coast of her Majesty's dominions in America shall, together with her cargo, be forfeited; that in all cases of seizure, the owner or claimant of the vessel, &c., shall be held to prove his innocence, or pay treble costs; that he shall be forced to try his action within three months, and give one month's notice at least to the seizing officer, containing everything intended to be proved against him, before any suit can be instituted; and also prove that the notice has been given. The seizing officer, moreover, is almost wholly irresponsible, inasmuch as he is liable to no prosecution if the judge certifies that there was probable cause; and the plaintiff, if successful in his suit, is only to be entitled to two pence damages without costs, and the defendant fined not more than one shilling. In short, some of these rules and regulations are violations of well established principles of the common law of England, and of the principles of the just laws of all civilized nations, and would seem to have been designed to enable her Majesty's authorities to seize and confiscate with impunity American vessels, and embezzle indiscriminately the property of American citizens employed in the fisheries on the coasts of the British provinces.

It may be proper, also, on this occasion, to bring to the notice of her Majesty's government the assertion of the provincial legislature, "that the Gulf or Strait of Canso is a narrow strip of water, completely within and dividing several counties of the province," and that the use of it by the vessels and citizens of the United States is in violation of the treaty of 1818. This strait separates Nova Scotia from the island of Cape Breton, which was not annexed to the province until the year 1820. Prior to that, in 1818, Cape Breton was enjoying a government of its own, entirely distinct from Nova Scotia, the strait forming the line of demarcation between them, and being then, as now, a thoroughfare for vessels passing into and out

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of the Gulf of St. Lawrence. The union of the two colonies cannot, therefore, be admitted as vesting in the province the right to close a passage which has been freely and indisputably used by the citizens of the United States since the year 1783. It is impossible, moreover, to conceive how the use on the part of the United States of this right of passage, common, it is believed to all other nations, can in any manner conflict with the letter or spirit of the existing treaty stipulations. The undersigned would therefore fain hope that her Majesty's government will be disposed to meet, as far as practicable, the wishes of the American government, in accomplishing in the fullest and most liberal manner the objects which both governments had in view in entering into the conventional arrangement of 1818.

He has accordingly been instructed to bring the whole subject under the consideration of her Majesty's government, and to remonstrate on the part of his government against the illegal and vexatious proceedings of the authorities of Nova Scotia against the citizens of the United States engaged in the fisheries, and to request that measures may be forthwith adopted by her Majesty's government to remedy the evils arising out of the misconstruction on the part of its provincial authorities of their conventional obligations, and prevent the possibility of the recurrence of similar acts.

The undersigned renews to Lord Palmerston assurances of his distinguished consideration.

A. STEVENSON.

Lord Palmerston to Mr. Stevenson.

FOREIGN OFFICE, *April 2, 1841.*

The undersigned, her Majesty's principal Secretary of State for Foreign Affairs, has the honor to acknowledge the receipt of the note from Mr. Stevenson, Envoy Extraordinary and Minister Plenipotentiary from the United States of America, of the 27th ultimo, bringing under the notice of her Majesty's government certain proceedings of the colonial authorities of Nova Scotia in relation to the seizure and interruption of the vessels and citizens of the United States, engaged in intercourse with the ports of Nova Scotia, and the prosecution of the fisheries on its neighboring coasts; and the undersigned has lost no time in referring Mr. Stevenson's representation to the Secretary of State for the Colonial Department.

The undersigned has the honor to renew to Mr. Stevenson the assurances of his high consideration.

PALMERSTON.

Lord Palmerston to Mr. Stevenson.

FOREIGN OFFICE, *April 28, 1841.*

The undersigned, her Majesty's principal Secretary of State for Foreign Affairs, with reference to the note which he adddressed to Mr. Stevenson, Envoy Extraordinary and Minister Plenipotentiary from the United States of America, dated the 2d instant, stating that he had referred to the Secretary of State for the Colonial Department, Mr. Stevenson's note of the 27th ultimo, respecting certain proceedings of the colonial authorities of Nova Scotia in relation to the seizure and interruption of the vessels and citizens of the United

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States of America engaged in intercourse with the ports of Nova Scotia, and in the prosecution of the fisheries on its neighboring coasts, has the honor to inform Mr. Stevenson, that he has since received from the Colonial Department a letter informing him that copies of the papers received from Mr. Stevenson would be forwarded to Lord Falkland, with instructions to inquire into the allegations contained therein, and to furnish a detailed report upon the subject.

The undersigned has the honor to renew to Mr. Stevenson the assurances of his high consideration.

PALMERSTON.

Consul Livingston to Mr. Webster.

CONSULATE OF THE UNITED STATES OF AMERICA
Halifax 15 May 1841.

Honble. DANIEL WEBSTER
Secretary of State
Washington

SIR In a letter from the United States Consular Agent, dated Yarmouth, N. S. 8 May, 1841, addressed to me, he states,—"I am sorry to inform you that yesterday the United States Fishing Schooner '*Pioneer*' arrived at this Port detained by the Master of the Government (British) Schooner '*The Sisters*' for an alleged infraction of the regulations for the protection of the British Fisheries." At the same time, I also received the Statement of this seizure, under oath, of the Captain and Crew of the said Schooner "*Pioneer*," a copy of which I herewith transmit. On the receipt of these papers, I immediately addressed a letter to the Provincial Secretary (of this Province), at Halifax, enclosing these depositions, and with a request that they should be handed to His Excellency The Lieutenant-Governor, all of which has been complied with. The following is an extract of the Secretary's letter, dated 14th May, addressed to me, at Halifax. "And I have it in command to acquaint you that on the return of the seizing officer, who is under orders to be here on the 17th inst; His Excellency will lose no time in communicating to you his decision in this Case."

The seized vessel is owned by Joseph Parsons of Eastbrook, State of Maine.

I have the honor to be Sir Your most obedient humble servant

T. B. LIVINGSTON,
Consul, U. S. A.

[Inclosure.]

PROVINCE OF NOVA SCOTIA, }
County of Yarmouth, ss. }

Isaac Smith late Master of the Schooner *Pioneer* of Sullivan, State of Maine, in the United States of America, and Leonard Worcester, Francis N. Jellison, William S. Hodgkins, Twisden Bowden, and Edmund Crabtree, Seamen of said Schooner make oath and say, and first the said Isaac Smith for himself saith, that on the second day of this present month, he proceeded with the said Schooner from the port of Hancock in the said State, bound on a fishing voyage in the Bay of Fundy, and that, until after the time of the seizure hereafter mentioned, the said Schooner was in no port creek or place whatever, in the Province of Nova Scotia, or any other British Possession, and

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deponent saith that on Thursday the seventh instant, between the hours of ten and eleven O'Clock in the morning, while the said Schooner lie at Anchor off Sandy Cove, near to Briar Island, on the Coast of Nova Scotia, about four miles from the land, a Schooner hove in sight, and on coming within hail, a person from on board of her, called to deponent, and informed him, that his vessel would be immediately seized, unless he quitted the coast, or to that effect, that deponent and his crew proceeded immediately to take up the anchor, and get underweigh, but before that object could be effected, within twenty minutes a boat came alongside, and the persons in it took command of deponent's vessel; deponent was then informed that the Schooner from which he had been hailed was the British Government Schooner "*The Sisters*," the Master of which vessel, at once proceeded to take his crew out of his vessel, and to carry her into the port of Yarmouth in the said Province where she now lies dismantled, and detained together with the Cargo of Salt and Stores: And deponent most solemnly saith that the said Schooner the *Pioneer* was at the time of her seizure not within three marine miles of any part of the Province of Nova Scotia, or the coast thereof; that the Commander of the said Government Schooner endeavored to ascertain the distance by sailing his vessel towards the shore, calculating the distance by comparing the rate of her sailing as ascertained by his log, with the time spent in running the distance between the place of seizure and the shore, but deponent saith that he commenced to run at least half a mile within the spot where deponent's Schooner had been at anchor, nor did he proceed nearer to the shore than a quarter of a mile, and the wind at the time was so variable, that it is impossible he could have measured the distance with any certainty, and he saith that when the said Schooner was seized she had not been at anchor longer than three hours, she was at least four miles from the shore, in sixty fathoms water, and that but twelve codfish has been taken on board his vessel since her arrival on the fishing ground. And these deponents Leonard Worcester, Francis N. Jellison, William S. Hodgkins, Twisden Bowden and Edmund Crabtree for themselves severally say that, they have read the above statement of Isaac Smith, and that it is in every particular just and true, and they say that they have no interest whatever in the said Schooner "*The Pioneer*," or her voyage, save as regards their right to wages from the Owner of her—And this deponent Isaac Smith lastly saith that he has no interest in the said last-mentioned Schooner save as abovementioned, that he wholly disclaims any intention to trespass upon the British fishing grounds, nor does he believe that he has in any manner done so, or given just cause for the seizure or detention of the said vessel of which he was master as aforesaid.

ISAAC SMITH
LEONARD WORCESTER
WILLIAM S. HODGKINS
TWISDEN BOWDEN
EDMUND S. CRABTREE
FRANCIS N. JELLISON.

Sworn to before me at Yarmouth this 8th day of May, Annoque Domini 1841.

HENRY A. GRANTHAM,
Not. Pub.

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Consul Livingston to Mr. Webster.

CONSULATE OF THE UNITED STATES OF AMERICA,
Halifax, N. S., 16th October, 1841.

To the Honble DANIEL WEBSTER,
Secretary of State, Washington,

SIR: I have the honor to enclose the depositions of Saml. L. Fears and Francis Bennett Masters of the American Fishing Schooners *Egret* and *Mars* of Gloucester, seized for an alleged infraction of the Treaty for the protection of the British Fisheries. The deposition of the seizing officer is, (as usual) at variance with those of the party seized. I applied to the authorities for the release of these Vessels, and received from the Solicitor General the following reply—"Lord Falkland has submitted to me the affidavits of Samuel L. Fears and Francis Bennett, Masters of Vessels seized for violation of the regulations for protecting the fisheries: the disposition of the Government as you know, is not to institute proceedings unless the offence is of sufficient magnitude, which I fear is the case on the present occasion."

There are at present in this Harbour Four British Frigates and three Sloops of War, to remain I am informed until something definite shall be done with regard to MLeod.

I have the honor to be, sir,
Your obliged and obt. servt.

T. B. LIVINGSTON,
Consul, U. S. A.

[Inclosure No. 1.]

PROVINCE OF NOVA SCOTIA, }
County of Halifax, ss: }

Be it known and made manifest unto all whom it may concern:

That on this fourth day of October, in the year of Our Lord one thousand eight hundred and forty one, before me, William James Ward, Esquire Notary and Tabellion Public by lawful authority duly admitted and sworn and practising in the City of Halifax in the Province of Nova Scotia, Personally came and appeared Francis Bennett, Master of the Schooner *Mars* of Gloucester in the United States of America who, being by me, the said Notary, duly examined and solemnly sworn on the Holy Evangelists of Almighty God, deposeth and saith that on the fifth day of the month of September now last past, the said Schooner *Mars* sailed from the Port of Gloucester aforesaid bound on a fishing voyage in which she was engaged in American waters making her passage to the Gut of Canso. that on the twenty-second day of September aforesaid, when the said Schooner was under sail, about seven marine miles from any land, and off Sea Wolf Island, he descried a vessel leeward carrying *American Colors and no other flying*, for which he run, and on approaching her, the said Schooner *Mars* was saluted by a shot from the said vessel, which *afterward* proved to be the *British Government* Cutter, although she wore the *National* colours of the *United States* of America; that five men then came on board of the said Schooner *Mars* in a boat from the said Government Schooner *Victory;* that the said men were all armed with pistols, one of whom ordered this appearer into the boat, but he, being on the high seas, and in the legal pursuit of his avocation, refused to leave the vessel to which he

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belonged and then the person aforesaid, who proved afterwards to be Mr. Marshall, threatened to throw deponent into the boat, and as he was unarmed and completely at the mercy of the invaders, no alternative remained for him to choose, and he was compelled to get into the said boat with one of his own men, where they were carried on board the *Victory* and taken thence to Port Hood, where they arrived on the following day and proceeded thence to the Gut of Canso, where they met the said Schooner *Mars*, she having been brought there by part of the Crew of the *Victory*, and the whole Crew of the said Schooner *Mars* were then put ashore by the said Mr. Marshall and there set adrift, and the said vessel *Mars* was carried into Guysborough and taken possession of by the said Mr. Marshall; and the said Francis Bennet further maketh oath and saith, that from the time he left Gloucester on the said voyage, he and the crew of the said Schooner *Mars* were only once engaged in fishing, which was on the nineteenth day of the said month of September when she was off Port Hood, and four marine miles from the land; and that the officer of the said Schooner *Victory* did not make himself known to this deponent when he boarded the said Schooner *Mars*, neither demanded the Ship's papers, but with arms and threats as aforesaid compelled this deponent to leave his vessel, while under sail, and pursuing her proper course, and in no way or manner whatever, trespassing on the laws of Great Britain.

(Signed) FRANCIS BENNETT.

In testimony whereof the said appearer hath hereunto subscribed his name making oath thereto, and I, the said Notary, have also set my hand and affixed my seal of Office at Halifax aforesaid, this fourth day of October, One thousand eight hundred and forty-one.

WILLIAM JAMES WARD,
Notary and Tabellion Public.

[Inclosure No. 2.]

PROVINCE OF NOVA SCOTIA,
County of Halifax, ss.

Be it known and Made Manifest unto all whom it doth, shall or in anywise may concern:

That on this fourth day of October in the Year of Our Lord one thousand eight hundred and forty-one, Before me, William James Ward, Esquire, Notary and Tabellion Public, by Lawful authority duly admitted and sworn and practising in the City of Halifax, in the Province of Nova Scotia, Personally came and appeared Samuel L. Fears, Master of the Schooner *Egret* of Gloucester in the United States of America, who being by me, the said Notary, fully examined, and solemnly sworn on the Holy Evangelists of Almighty God, deposeth and saith, That on the seventeenth day of the month of June, now last past, the said vessel sailed from the port of Gloucester aforesaid, on a Fishing Voyage, to Bay St. Lawrence, the Magdalene Islands and other usual fishing grounds, and has been so engaged in Fishing during the past season, in no one instance fishing within three marine miles of the British Shores, nor at any time being within that distance from them, except when making a harbor for a shelter, or to obtain wood or water, which the said vessel was compelled to do,

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occasionally through the season. That on the twenty-second day of the month of September last, this deponent, with the rest of the crew of the said Schooner *Egret*, were on board of the said vessel, which was then running up Cape Breton Island, when off Sea Wolf Island, and about seven miles from the land, a vessel astern of the said Schooner fired a gun for her to heave to, which the said Schooner did; That the vessel which fired the gun as aforesaid, and which was the Government Schooner *Victory* then sent a boat alongside of the said Schooner *Egret*, with seven men one of whom ordered three or four men of the said Schooner *Egret* to get into the boat of the *Victory*, whereupon the said deponent, as Master of the said Schooner *Egret* being then on the high seas and pursuing his lawful business, ordered the men not to leave the said Schooner on which they had been legally shipped; that four men then jumped on deck from the said boat, one of whom said that if the Crew of the said Schooner *Egret* did not get into the boat he would make them when the deponent as Commander of the said vessel *Egret* ordered them not to leave their vessel; that pistols were then handed up from the boat; that deponent then went below to look for some defensive weapon, but finding none in an efficient state to enable him to protect his men, his vessel or himself, he returned to the deck unarmed, when he found that four of the men of the said Schooner *Egret* were in the said boat alongside, and one man belonging to the said boat stood over the Companion way of the said Schooner *Egret*, armed with a pistol, and another man armed with a handspike; that the boat proceeded with two of her original crew and four men belonging to the Schooner *Egret* as aforesaid, on board the Schooner *Victory*, and four men belonging to the boat of the *Victory* carried the said Schooner *Egret* into Port Hood, at which place the said Schooner *Victory* also arrived during the same night: That on the following morning the twenty-third day of September, in the boat from the *Victory* came on board of the said Schooner *Egret*, Mr. Marshall (who was the person that ordered the men into the boat as aforesaid) and then demanded from this deponent his ship's papers, who in reply inquired for his authority for making this demand, to which Mr. Marshall in answer said "I will shew you my authority by pitching you into the boat;" that deponent then replied that if Mr. Marshall were a Government officer and the Vessel a Revenue Cutter he would shew him the license of the Schooner *Egret*, which the other declined accepting; the said Schooner was then taken to the Gut of Canso, where Mr. Marshall discharged her Crew, and placing deponent on board of said Schooner *Victory*, he proceeded with both Vessels to the Port of Guysborough, where Mr. Marshall took the ship's papers of the said Schooner *Egret* out of the cabin of that vessel, and then took possession of the vessel herself; And the said Samuel L. Fears on oath further declared and saith that at the time when he was fired at and brought to, he was under sail as aforesaid, and had been so for some time previous, and that neither himself nor any person on board the said Schooner *Egret* had been fishing since the preceding day when they took only one fish about twelve miles off the land, and then no round fish on board; That the Officer of the said Schooner *Victory* did not make himself known to this deponent, as a seizing or authorized officer when he boarded the said Schooner *Egret*, and that she was boarded after being brought to on

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the high seas and taken possession of when she was not within the limits prescribed; was not fishing at all, had no fish recently taken on board, but was under sail and in no way was she or this deponent trespassing against the laws of Great Britain.

(Signed) SAMUEL L. FEARS.

In testimony whereof the said deponent hath hereunto set his hand making oath thereto, and I, the said Notary have also my hand subscribed and affixed my seal of Office at Halifax aforesaid, this fourth day of October, One thousand eight hundred and forty one.

WILLIAM JAMES WARD,
Notary and Tabellion Public.

Consul Livingston to Mr. Webster.

CONSULATE OF THE UNITED STATES OF AMERICA,
Halifax, N. S., 1st December, 1841.

To the Honble. DANIEL WEBSTER,
Secretary of State, Washington.

SIR: On the 17th ultimo I had the honor to receive the Acting Secretary's despatch of 21st October, also the Acts and Resolutions of the twenty-seventh Congress of the United States, and on the 29th ulto. your despatch of 1st July last.

Five American Fishing Vessels have been condemned this fall, by a decree of the Judge of the Court of Vice-Admiralty, for violation of the Treaty for the Protection of the British Fisheries, and unless something more definite than the Convention entered into at London 20th October, 1818, shall be carried into effect, these seizures must soon be a source of great annoyance both to the Government of the United States as well as that of Great Britain.

I have the honor to be, sir,
Your obliged & Obdt. servant,

T. B. LIVINGSTON,
Consul, U. S. A.

Mr. Upshur to Mr. Everett.

DEPARTMENT OF STATE,
Washington, June 30, 1843.

(No. 49)

SIR: I have the honor to transmit to you herewith, copies of a letter and accompanying papers relating to the seizure on the 10th of May last, on the coast of Nova Scotia, by an officer of the provincial customs, of the American fishing schooner *Washington*, of Newburyport, Massachusetts, Cheny, master, for an alleged infraction of the stipulations of the convention of October 20, 1818, between the United States and Great Britain.

Upon a reference to the files of the legation at London, you will find that this complaint is not the first of a similar character which has arisen out of the proceedings of the authorities of Nova Scotia under their construction of the convention, and that representations upon the subject have heretofore been made to the British government on behalf of American citizens, but, so far as this department is advised, without leading to a satisfactory result.

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For a full understanding of the whole question involved I would particularly point your attention to the instructions of this department to Mr. Stevenson, Nos. 71 and 89, of the respective dates of April 17, 1840, and February 20, 1841, and to the several despatches addressed by that minister to the Secretary of State, numbered 97, 99, 108, 120 and 124, during the years 1840 and 1841.

I need not remark upon the importance to the negotiating interests of the United States of having a proper construction put upon the first article of the convention of 1818 by the parties to it. That which has hitherto obtained is believed to be the correct one. The obvious necessity of an authoritative intervention to put an end to proceedings on the part of the British colonial authorities, alike conflicting with their conventional obligations and ruinous to the fortunes and subversive of the rights of an enterprising and deserving class of our fellow citizens, is too apparent to allow this government to doubt that the government of her Britannic Majesty will take efficient steps for the purpose. The President's confident expectation of an early and satisfactory adjustment of these difficulties is grounded upon his reliance on the sense of justice of the Queen's government, and on the fact that from the year 1818, the date of the convention, until some years after the enactment of the provincial law out of which these troubles have arisen a practical construction has been given to the first article of that instrument which is firmly relied on as settling its meaning in favor of the rights of American citizens as claimed by the United States.

I have, therefore, to request that you will present this subject again to the consideration of her Majesty's government by addressing a note to the British Secretary of State for Foreign Affairs, reminding him that the letter of Mr. Stevenson to Lord Palmerston remains unanswered, and informing him of the anxious desire of the President that proper means should be taken to prevent the possibility of a recurrence of any like cause of complaint.

I am, sir, with great respect, your obedient servant,

A. P. UPSHUR.

EDWARD EVERETT, Esq., &c., &c., &c.

[Inclosure.]

Mr. Winthrop to Mr. Legare.

BOSTON, *May 23, 1843.*

SIR: I transmit herewith a memorial of the owner of an American fishing vessel which has, within a few days past, been seized by the authorities of Nova Scotia for an alleged violation of treaty stipulations. I learn that many of the fishing vessels of this State would be liable to seizure under the construction which has been adopted by the British authorities in the present instance. The early attention of our government to the subject is therefore earnestly desired by those who are engaged in this branch of business, and more especially by the memorialists whose property is immediately in jeopardy.

I am, very respectfully, your obedient servant.

ROBERT C. WINTHROP.

Hon. H. S. LEGARE,
Secretary of State, &c., &c.

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[Sub-inclosure 1.]

Mr. Currier to Mr. Legare.

BOSTON, *May 17, 1843.*

The undersigned, Charles Currier, of Newburyport, in the State of Massachusetts, respectfully represents that he is the owner of a schooner called the *Washington*, of and belonging to said Newburyport; on the 28th day of April last on a fishing cruise under the command of John C. Cheny as master, and manned by three seamen, of whom William Bragg, whose deposition accompanies this memorial, was one; that on the tenth day of the present month the said schooner, while her crew were engaged in taking fish at a place ten miles distant from the coast of Nova Scotia, was taken possession of by an officer of the provincial customs and taken into some port of the province of Nova Scotia, where she is still detained, and, as he has reason to apprehend, will be confiscated. The undersigned forwards herewith the deposition of the said Bragg, and begs leave to refer to the same for a more particular account of the case. As your memorialist believes that the master and crew of said vessel had not been guilty of violating any treaty or engagement between Great Britain and the United States, he humbly prays that the government of the United States will, as soon as may be, take effectual measures to restore to him his property so seized, with compensation for damages and expenses occasioned by such seizure.

CHARLES CURRIER.

To the Honorable HUGH S. LEGARE,
Acting Secretary of State for the United States.

[Sub-inclosure 2.]

BOSTON, *May 17, 1843.*

I, William Bragg, of Seabrook, in the State of New Hampshire, on oath depose and say that, on the 28th day of April now last past, I sailed from Newburyport, as a seaman in the schooner *Washington*, whereof John C. Cheney was master, said schooner bound upon a fishing excursion, there being four men all told on board said vessel, including the master; that the said master and crew fished from time to time between the coasts of Maine and Nova Scotia until the tenth day of the present month; that on the said last mentioned day, while engaged in taking fish at least ten miles from the coast of Nova Scotia, the said schooner was boarded by an officer employed in the British revenue service of the name of Darby, and taken possession of in the name of the British government, the said officer alleging that the place where we were fishing was within the bounds prohibited by treaty to American fishermen; that I, together with the other men belonging to the schooner, was then put on board a small vessel, and we were landed at a place near Digby; that the captain (Cheney) continued on board the schooner, whether voluntarily or not I do not know, and when we left the schooner the British officer was in command thereof, and set sail with her for Yarmouth, in said Nova Scotia, to which place I have no doubt the schooner was carried under his command; that on the 11th instant, I and the other men of the schooner got passage from Digby in a vessel bound for

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Portsmouth, New Hampshire, at which place we arrived on the 15th instant. I further depose and say, that at no time while I was on board said schooner did we or any of us take or attempt to take fish within ten miles of the coast of Nova Scotia, New Brunswick, or of the islands belonging to either of those provinces; that the place where said schooner was taken possession of, as aforesaid, was opposite to a place on the coasts of Nova Scotia called Gulliver's-hole, and is distant from Annapolis-gut about fifteen miles, the said Gulliver's-hole being to the south-westward of said Annapolis gut.

WILLIAM BRAGG.

UNITED STATES OF AMERICA, STATE OF MASSACHUSETTS, } ss.
County of Suffolk and City of Boston, }

On this 17th day of May, A. D., 1843, before me, John P. Bigelow, a notary public, duly constituted and sworn within and for said county and city, came the above William Bragg, and made oath that the statements by him above signed are true.

Witness my hand and notarial seal.

[L. S.]

JOHN P. BIGELOW,
Notary Public.

Mr. Everett to Lord Aberdeen.

46 GROSVENOR PLACE, *August 10, 1843.*

The undersigned, envoy extraordinary and minister plenipotentiary of the United States of America, has the honer to transmit to the earl of Aberdeen, her Majesty's principal Secretary of State for foreign affairs, the accompanying papers relating to the seizure on the 10th of May last, on the coast of Nova Scotia, by an officer of the provincial customs, of the American fishing schooner *Washington*, of Newburyport, in the State of Massachusetts, for an alleged infraction of the stipulations of the convention of the 20th of October, 1818, between the United States and Great Britain.

It appears from the deposition of William Bragg, a seaman on board the *Washington*, that at the time of her seizure she was not within ten miles of the coast of Nova Scotia. By the first article of the convention above alluded to, the United States renounce any liberty heretofore enjoyed or claimed by their inhabitants to take, dry, or cure fish on or within three marine miles of any of the coasts of her Majesty's dominions in America, for which express provision is not made in the said article. This renunciation is the only limitation existing on the right of fishing upon the coasts of her Majesty's dominions in America, secured to the people of the United States by the third article of the treaty of 1783.

The right, therefore, of fishing on any part of the coast of Nova Scotia, at a greater distance than three miles, is so plain that it would be difficult to conceive on what ground it could be drawn in question, had not attempts been already made by the provincial authorities of her Majesty's colonies, to interfere with its exercise. These attempts have formed the subject of repeated complaints on the part of the

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government of the United States, as will appear from several notes addressed by the predecessor of the undersigned to Lord Palmerston.

From the construction attempted to be placed, on former occasions, upon the first article of the treaty of 1818, by the colonial authorities, the undersigned supposes that the "*Washington*" was seized because she was found fishing in the Bay of Fundy, and on the ground that the lines within which American vessels are forbidden to fish, are to run from headland to headland, and not to follow the shore. It is plain, however, that neither the words nor the spirit of the convention admits of any such construction; nor, it is believed, was it set up by the provincial authorities for several years after the negotiation of that instrument. A glance at the map will show Lord Aberdeen that there is, perhaps, no part of the great extent of the seacoasts of her Majesty's possessions in America, in which the right of an American vessel to fish can be subject to less doubt than that in which the "*Wahington*" was seized.

For a full statement of the nature of the complaints which have, from time to time, been made by the government of the United States against the proceedings of the colonial authorities of Great Britain, the undersigned invites the attention of Lord Aberdeen to a note of Mr. Stevenson addressed to Lord Palmerston on the 27th March, 1841. The receipt of this note was acknowledged by Lord Palmerston on the 2d of April, and Mr. Stevenson was informed that the subject was referred by his lordship to the Secretary of State for the colonial department.

On the 28th of the same month Mr. Stevenson was further informed by Lord Palmerston, that he had received a letter from the colonial department, acquainting his lordship that Mr. Stevenson's communication would be forwarded to Lord Falkland with instructions to inquire into the allegations contained therein, and to furnish a detailed report upon the subject. The undersigned does not find on the files of this legation any further communication from Lord Palmerston in reply to Mr. Stevenson's letter of the 27th March, 1841, and he believes that letter still remains unanswered.

In reference to the case of the *Washington* and those of a similar nature which have formerly occurred, the undersigned cannot but remark upon the impropriety of the conduct of the colonial authorities in undertaking, without directions from her Majesty's government, to set up a new construction of a treaty between the United States and England, and in proceeding to act upon it by the forcible seizure of American vessels.

Such a summary procedure could only be justified by a case of extreme necessity, and where some grave and impending mischief required to be averted without delay. To proceed to the capture of vessels of a friendly power for taking a few fish within limits alleged to be forbidden, although allowed by the express terms of the treaty, must be regarded as a very objectionable stretch of provincial authority. The case is obviously one for the consideration of the two governments, and in which no disturbance of a right exercised without question for fifty years from the treaty of 1783, ought to be attempted by any subordinate authority. Even her Majesty's government, the undersigned is convinced, would not proceed in such a case to violent measures of suppression, without some understanding, with the government of the United States, or, in the failure of an attempt to

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come to an understanding, without due notice given of the course intended to be pursued.

The undersigned need not urge upon Lord Aberdeen the desirableness of an authoritative intervention on the part of her Majesty's government to put an end to the proceedings complained of. The President of the United States entertains a confidant expectation of an early and equitable adjustment of the difficulties which have been now for so long time under the consideration of her Majesty's government. This expectation is the result of the President's reliance upon the sense of justice of her Majesty's government, and of the fact, that, from the year 1818, the date of the convention, until some years after the attempts of the provincial authorities to restrict the rights of American vessels by colonial legislation, a practical construction was given to the 1st article of the convention, in accordance with the obvious purport of its terms and settling its meaning as understood by the United States.

The undersigned avails himself of this opportunity to tender to Lord Aberdeen the assurance of his distinguished consideration.

EDWARD EVERETT.

Consul Delavan to Mr. Upshur.

CONSULATE OF U. S. OF AMERICA,
Sydney, Nova Scotia, August 15, 1843.

SIR: It becomes my duty to inform you that the Fishing Schooner *Mary Francis*, Benjamin B. Swasey, Master, belonging to Marblehead and owned by Joseph Hidden, was brought into Arichat on Sunday, the 23rd day of July last and on the day following she was condemned and on the 28th the Hull and all the materials were sold at Public Auction for the benefit of all Concerned, the Vessel being insured, the Captain and Crew took their departure for Boston on the 29th, the day after the sale of the Vessel.

I am, etc.,

CHARLES H. DELAVAN,
U. S. Consul.

To the Honorable the SECRETARY OF STATE.

Consul Delavan to Mr. Upshur.

CONSULATE OF THE UNITED STATES OF AMERICA,
Sydney, Nova Scotia, Oct. 31st, 1843.

SIR: I have to inform you of the capture of the American Fishing Schooner *Commerce*, Captain Lombard, and belonging to Truro in the state of Massachusetts. She was captured on the 20th instant in the harbour of Port Hood by Captain E. Darby, Master of Her Majesty's Revenue Cutter *Sisters* for a breach of the Treaty existing between the United States and Great Britain. I have just learned the following particulars from my Consular Agent at Port Hood, John D. Tremain, Esquire. He states that the Vessel came into the harbour on the 20th instant in distress having lost her boat and split

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her Jib, that she had about fifty barrels of Mackerel on board and while the crew were splitting and salting their fish, Capatin Darby seized the Vessel. Mr. Tremain further states that he took strong affidavits from the crew, of the circumstances, and forwarded them by the Captain to Halifax and trusts by a proper representation backed by these affidavits and others from the Captain and the two men who went on to the Attorney General that the Vessel will be released without further difficulty.

I am, etc.,

CHARLES H. DELAVAN.

The Hon. A. P. UPSHUR,
Secretary of State.

Consul Delavan to Mr. Upshur.

CONSULATE OF THE U. S. OF AMERICA,
Sydney, Nova Scotia, Nov. 13, 1843.

SIR: I had the houour to inform you on the 31st of October last of the capture of American Fishing Schooner *Commerce* belonging to Truro, Massachusetts, Solloman H. Lombard, Master, which Vessel was seized by Captain E. Darby of Her Majesty's Revenue Cutter *Sisters* on the 20th of October last in the Harbour of Port Hood.

I would respectfully state that the above vessel has been delivered up to the Master by order of the Authorities in Halifax and that she sailed on the 8th instant from Arichat for Truro, Massachusetts, her port of destination.

I am, etc.,

(Signed) CHARLES H. DELAVAN,
U. S. Consul.

The Hon. A. P. UPSHUR,
Secretary of State.

Lord Aberdeen to Mr. Everett.

FOREIGN OFFICE, *April 15, 1844.*

The note which Mr. Everett, envoy extraordinary and minister plenipotentiary of the United States of America, addressed to the undersigned, her Majesty's principal secretary of State for foreign affairs, on the 10th of August last, respecting the seizure of the American fishing vessel *Washington* by the officers of Nova Scotia, having been duly referred to the colonial office, and by that office to the governor of Nova Scotia, the undersigned has now the honor to communicate to Mr. Everett the result of those references.

The complaint which Mr. Everett submits to her Majesty's government is that, contrary to the express stipulations of the convention concluded on the 20th of October, 1818, between Great Britain and the United States, an American fishing vessel was seized by the British authorities for fishing in the Bay of Fundy, where Mr. Everett

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affirms that, by the treaty, American vessels have a right to fish, provided they are at a greater distance than three marine miles from the coast.

Mr. Everett, in submitting this case, does not cite the words of the treaty, but states in general terms that, by the first article of said treaty the United States renounce any liberty heretofore enjoyed or claimed by their inhabitants to take, dry or cure fish on or within three miles of any of the coasts of her Majesty's dominions in America. Upon reference, however, to the words of the treaty, it will be seen that American vessels have no right to fish, and indeed are expressly debarred from fishing in any bay on the coast of Nova Scotia.

The words of the treaty of October, 1818, article 1, run thus: "And the United States hereby renounce forever any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish, on or within three marine miles of any of the coasts, bays, creeks or harbors of his Britannic Majesty's dominions in America, not included within the above mentioned limits, (that is, Newfoundland, Labrador, and other parts separate from Nova Scotia;) provided, however, that the American fishermen shall be admitted to enter such bays or harbors for the purpose of shelter," &c.

It is thus clearly provided that American fishermen shall not take fish within three marine miles of any bay of Nova Scotia, &c. If the treaty was intended to stipulate simply that American fishermen should not take fish within three miles of the coast of Nova Scotia, &c., there was no occasion for using the word "bay" at all. But the proviso at the end of the article shows that the word "bay" was used designedly; for it is expressly stated in that proviso, that under certain circumstances the American fishermen may enter *bays*, by which it is evidently meant that they may, under those circumstances, pass the sea-line which forms the entrance of the bay. The undersigned apprehends that this construction will be admitted by Mr. Everett.

That the *Washington* was found fishing within the Bay of Fundy is, the undersigned believes, an admitted fact, and she was seized accordingly.

The undersigned requests Mr. Everett to accept the assurances of his high consideration.

ABERDEEN.

EDWARD EVERETT, Esq.

Mr. Everett to Lord Aberdeen.

GROSVENOR PLACE, *May 25, 1844.*

The undersigned, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, had the honor duly to receive the note of the 15th April, addressed to him by the Earl of Aberdeen, her Majesty's principal Secretary of State for Foreign Affairs, in reply to the note of the undersigned of the 10th of August last, relative to the seizure of the American vessel, the *Washington*, for having been found fishing within the limits of the Bay of Fundy.

The note of the undersigned, of the 10th of August last, although its immediate occasion was the seizure of the *Washington*, contained

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a reference to the correspondence between Mr. Stevenson and Viscount Palmerston on the subject of former complaints of the American government, of the manner in which the fishing vessels of the United States had in several ways been interfered with by the provincial authorities, in contravention as is believed, of the treaty of October, 1818, between the two countries. Lord Aberdeen's attention was particularly invited to the fact that no answer as yet had been returned to Mr. Stevenson's note to Lord Palmerston, of 27th March, 1841, the receipt of which and its reference to the Colonial department were announced by a note of Lord Palmerston of the 2d April. The undersigned further observed that on the 28th of the same month Lord Palmerston acquainted Mr. Stevenson that his lordship had been advised from the Colonial office, that "copies of the papers received from Mr. Stevenson would be furnished to Lord Falkland, with instructions to inquire into the allegations contained therein, and to furnish a detailed report on the subject;" but that there was not found on the files of this legation any further communication from Lord Palmerston on the subject.

The note of Lord Aberdeen, of the 15th of April last, is confined exclusively to the case of the *Washington;* and it accordingly becomes the duty of the undersigned again to invite his lordship's attention to the correspondence above referred to between Mr. Stevenson and Lord Palmerston, and to request that inquiry may be made, without unnecessary delay, into all the causes of complaint which have been made by the American government against the improper interference of the British colonial, authorities with the fishing vessels of the United States.

In reference to the case of the *Washington*, Lord Aberdeen, in his note of the 15th of April, justifies her seizure by an armed provincial vessel, on the assumed fact that, as she was found fishing in the Bay of Fundy, she was within the limits from which the fishing vessels of the United States are excluded by the provisions of the convention between the two countries of October, 1818.

The undersigned had remarked in his note of the 10th of August last, on the impropriety of the conduct of the colonial authorities in proceeding in reference to a question of construction of a treaty pending between the two countries, to decide the question in their own favor, and in virtue of that decision to order the capture of the vessels of a friendly State. A summary exercise of power of this kind, the undersigned is sure would never be resorted to by her Majesty's government, except in an extreme case, while a negotiation was in train on the point at issue. Such a procedure on the part of a local colonial authority is of course highly objectionable, and the undersigned cannot but again invite the attention of Lord Aberdeen to this view of the subject.

With respect to the main question of the right of American vessels to fish within the acknowledged limits of the Bay of Fundy, it is necessary, for a clear understanding of the case, to go back to the treaty of 1783.

By this treaty it was provided that the citizens of the United States should be allowed "to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use, (but not to dry or cure the same on that island) and also on the coasts, bays and creeks of all other of his Britannic Majesty's dominions in Amer-

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ica, and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbors and creeks of Nova Scotia, Magdalen Islands and Labrador, so long as the same shall remain unsettled; but so soon as the same or either of them shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlement without previous agreement for that purpose with the inhabitants, proprietors or possessors of that ground."

These privileges and conditions were in reference to a country of which a considerable portion was then unsettled, likely to be attended with differences of opinion as to what should, in the progress of time, be accounted a settlement from which American fishermen might be excluded. These differences in fact arose, and by the year 1818 the state of things was so far changed that her Majesty's government thought it necessary in negotiating the convention of that year, entirely to except the province of Nova Scotia from the number of the places which might be frequented by Americans as being in part unsettled, and to provide that the fishermen of the United States should not pursue their occupation within three miles of the shores, bays, creeks and harbors of that and other parts of her Majesty's possessions similarly situated. The privilege reserved to American fishermen by the treaty of 1783, of taking fish in all the waters and drying them on all the unsettled portions of the coast of these possessions was accordingly by the convention of 1818 restricted as follows:—

"The United States hereby renounce forever any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbors of his Britannic Majesty's dominions in America, not included within the above mentioned limits; provided, however, that the American fishermen shall be admitted to enter such bays or harbors for the purpose of sheltering and repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever."

The existing doubt as to the construction of the provision arises from the fact that a broad arm of the sea runs up to the northeast between the provinces of New Brunswick and Nova Scotia. This arm of the sea being commonly called the Bay of Fundy, though not in reality possessing all the characters usually implied by the term "bay," has of late years been claimed by the provincial authorities of Nova Scotia to be included among "the coasts, bays, creeks and harbors forbidden to American fishermen."

An examination of the map is sufficient to show the doubtful nature of this construction. It was notoriously the object of the article of the treaty in question to put an end to the difficulties which had grown out of the operations of the fishermen from the United States along the coasts and upon the shores of the settled portions of the country, and for that purpose to remove their vessels to a distance not exceeding three miles from the same. In estimating this distance, the undersigned admits it to be the intent of the treaty, as it is itself reasonable, to have regard to the general line of the coast; and to consider its bays, creeks and harbors, that is, the indentation usually so accounted, as included within that line. But the undersigned cannot admit it to be reasonable, instead of thus following the general directions of the coast, to draw a line from the

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southwestern-most point of Nova Scotia to the termination of the northeastern boundary between the United States and New Brunswick, and to consider the arms of the sea which will thus be cut off, and which cannot, on that line be less than sixty miles wide, as one of the bays on the coast from which American vessels are excluded. By this interpretation the fishermen of the United States would be shut out from the waters distant, not three, but thirty miles from any part of the colonial coast. The undersigned cannot perceive that any assignable object of the restriction imposed by the convention of 1818 on the fishing privilege accorded to the citizens of the United States by the treaty of 1783 requires such a latitude of construction.

It is obvious that (by the terms of the treaty) the furthest distance to which fishing vessels of the United States are obliged to hold themselves from the colonial coasts and bays, is three miles. But, owing to the peculiar configuration of these coasts, there is a succession of bays indenting the shores both of New Brunswick and Nova Scotia, within the Bay of Fundy. The vessels of the United States have a general right to approach all the bays in her Majesty's colonial dominions, within any distance not less than three miles—a privilege from the enjoyment of which they will be wholly excluded—in this part of the coast, if the broad arm of the sea which flows up between New Brunswick and Nova Scotia, is itself to be considered one of the forbidden bays.

Lastly—and this consideration seems to put the matter beyond doubt—the construction set up by her Majesty's colonial authorities, would altogether nullify another, and that a most important stipulation of the treaty, about which there is no controversy, viz: the privilege reserved to American fishing vessels of taking shelter and repairing damages in the bays within which they are forbidden to fish. There is, of course, no shelter nor means of repairing damages for a vessel entering the Bay of Fundy, in itself considered. It is necessary, before relief or succor of any kind can be had, to traverse that broad arm of the sea and reach the bays and harbors, properly so called, which indent the coast, and which are no doubt the bays and harbors referred to in the convention of 1818. The privilege of entering the latter in extremity of weather, reserved by the treaty, is of the utmost importance. It enables the fishermen, whose equipage is always very slender (that of the *Washington* was four men all told) to pursue his laborious occupation with comparative safety, in the assurance that in one of the sudden and dangerous changes of weather so frequent and so terrible on this iron bound coast, he can take shelter in a neighboring and friendly port. To forbid him to approach within thirty miles of that port, except for shelter in extremity of weather, is to forbid him to resort there for that purpose. It is keeping him at such a distance at sea as wholly to destroy the value of the privilege expressly reserved.

In fact it would follow, if the construction contended for by the British colonial authorities were sustained, that two entirely different limitations would exist in reference to the right of shelter reserved to American vessels on the shores of her Majesty's colonial possessions. They would be allowed to fish within three miles of the place of shelter along the greater part of the coast; while in reference to the entire extent of shore within the Bay of Fundy, they would be wholly prohibited from fishing along the coast, and would be kept

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at a distance of twenty or thirty miles from any place of refuge in case of extremity. There are certainly no obvious principles which render such a construction probable.

The undersigned flatters himself that these considerations will go far to satisfy Lord Aberdeen of the correctness of the American understanding of the words "Bay of Fundy," arguing on the terms of the treaties of 1783 and 1818. When it is admitted that, as the undersigned is advised, there has been no attempt till late years to give them any other construction than that for which the American government now contends, the point would seem to be placed beyond doubt.

Meantime Lord Aberdeen will allow that this is a question, however doubtful, to be settled exclusively by her Majesty's government and that of the United States. No disposition has been evinced by the latter to anticipate the decision of the question; and the undersigned must again represent it to the Earl of Aberdeen as a matter of just complaint and surprise on the part of his government, that the opposite course has been pursued by her Majesty's colonial authorities, who have proceeded (the undersigned is confident without instructions from London,) to capture and detain an American vessel on a construction of the treaty which is a matter of discussion between the two governments, and while the undersigned is actually awaiting a communication on the subject promised to his predecessor.

This course of conduct, it may be added, objectionable under any circumstances, finds no excuse in any supposed urgency of the case. The *Washington* was not within three times the limit admitted to be prescribed in reference to the approach of American vessels to all other parts of the coast, and in taking a few fish, out of the abundance which exists in those seas, she certainly was inflicting no injury on the interests of the colonial population which required this summary and violent measure of redress.

The undersigned trusts that the Earl of Aberdeen, on giving a renewed consideration to the case, will order the restoration of the *Washington*, if still detained, and direct the colonial authorities to abstain from the further capture of the fishing vessels of the United States under similar circumstances, till it has been decided between the two governments whether the Bay of Fundy is included among "the coasts, bays, creeks and harbors" which American vessels are not permitted to approach within three miles.

The undersigned requests Lord Aberdeen to accept the assurances of his distinguished consideration.

EDWARD EVERETT.

The EARL OF ABERDEEN, &c., &c.

Consul Delavan to Mr. Calhoun.

CONSULATE OF THE U. S. OF AMERICA,
Sydney, Nova Scotia, August 10th, 1844.

SIR: It becomes my duty to acquaint you with the capture of the American Fishing Schooner, *Argus*, William Doughty, Master, and owned at Portland in the State of Maine By John and Josiah Starling for an alleged trespass on the fishing grounds. The Vessel was

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brought into this port on the 7th instant by the Revenue Cutter *Sylph*, Phillip S. Dodd, Esquire, Commander. I have learned the following particulars from the Master and Crew of the *Argus*, and also from the Captain and Crew of another fishing Vessel belonging to the same parties who own the *Argus* and who were in company with the *Argus* at the time of the seizure. The Vessel sailed from Portland on the 26th day of June last for a fishing voyage, that nothing particular occurred until the 6th day of August last about three o'clock P. M., when said vessel then being at Anchor, Corn Bay Head, on the eastern coast of Cape Breton bearing by his compass southwest distance about 25 miles Smokey Cape, bearing northwest distance about 15 miles and Cape North bearing North distance about twenty-five miles, that four or five days previous to the sixth of August, they had seen no land, the weather being thick, foggy, and rainy, with strong breezes, on which day about 9 o'clock A. M., the vessel came to anchor not knowing the situation, during the day the weather continued perfectly calm and the fog cleared up when the vessel was discovered to be in the position as before mentioned. The Captain went below leaving directions to be called as soon as the wind sprung up with the intention of getting immediately under weigh to proceed to the outer bank of St. Ann's which lies east south east from Cape Smoke distance about thirty miles where the Captain had fished several seasons previous, the Captain and three of the crew have sworn before the surrogate of the Court of Admiralty of Nova Scotia to the above facts and that they were not at the time of seizure closer to any one point of Cape Breton than fifteen miles and more than three miles to the eastward of a line drawn from the headlands of Cow Bay and Cape North a distance of fifty miles. The Captain and two of the crew who are principal witnesses have proceeded to Halifax under my directions to effect the release of the Vessel and I trust from the strong affidavits which the Captain took with him backed by the two witnesses and after a fair representation made to the Attorney General that the vessel will be released without further difficulty. The remainder of the crew belonging to the *Argus* sailed for Portland on the 8th instant having procured a free passage on board of a fishing vessel which was bound for that place.

I am, etc.,

(Signed) CHARLES H. DELAVAN,
U. S. Consul.

Hon. JOHN C. CALHOUN,
Secretary of State.

Mr. Calhoun to Mr. Everett.

(No. 105.) DEPARTMENT OF STATE,
Washington, September 6, 1844.

SIR: It would seem from a perusal of the papers which accompany this despatch that an outrage has recently been committed by the British cutter *Sylph* on the American fishing schooner *Argus*, William Doughty master, off the coast of Cape Breton, much in character with some of those which have from time to time been made the subject of remonstrance by this government. Instructions in cases

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analagous to the one now under consideration having already been given by this department to the legation of the United States at London, it is not deemed necessary to repeat them at this time for the purpose of expressing the views of this government, or of pointing out the course which you will be expected to pursue in presenting the case of the *Argus* to the notice of the British government.

I am, sir, respectfully, your obedient servant,

J. C. CALHOUN.

EDWARD EVERETT.

[Inclosure No. 1.]

PORTLAND, *August 26, 1844.*

SIR: We beg leave to lay before you the enclosed letter from our consul at Halifax, and earnestly beg for your interference to see justice done to us. We are fishermen and have but little property and are wholly unable to pay the sum the consul says is required by the court to be secured before we are permitted to have a trial of our vessel. Our vessel was fifteen miles from any land when she was seized, and if the British construction of the treaty is right, then no American can fish in the Bay of Fundy, even if he is fifty miles from any shore.

As well might we draw a line from Cape Florida to Cape Cod and say that *meant* three "marine miles from the shore" between these capes.

It appears, from the consul's letter, to be the determination of the English government to condemn the vessel, and all our vessels found within "three marine miles" of a line drawn from cape to cape. Our vessel had two hundred and fifty quintals of fish on board, and the vessel was valuable to us and her crew, who were turned on shore without funds or means to help them home. It appears that this seizure is made to settle the disputed construction of the treaty, and we most confidently rely on the strong arm of our government to defend and protect us in our honestly acquired property and peaceful industry.

With great respect, we are, sir,

Your most obedient servants,

J. & J. STARLING.

To the Hon. J. C. CALHOUN,

Secretary of State, Washington City.

[Inclosure No. 2.]

I, Edwin Doughty, of Portland, State of Maine, aged twenty-three years, on oath testify and say, that I was shipped in April last as salter on board the fishing schooner *Argus*, of Portland, of which vessel William Doughty was master or skipper; that we sailed in April for Cape Sables, made our freight of fish and returned about the 10th of June last; we sailed again about the 18th of June, and in six days arrived on St. Ann's bank, which lies between Cow-bay head and Cape North, and is more than fifteen marine miles from any land; we fished there until the sixth day of July, when we were captured by a cutter called the *Sylph*, of Halifax, being a Nova Scotia government schooner commanded by a man named Dodge, and carried us into Sidney. We arrived at Sidney about five o'clock in the morning

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of the 7th July, where we lay until ten o'clock next morning when Dodge ordered us all to leave the *Argus*, in fifteen minutes, and that all of our wearing apparel that we did not get out in fifteen minutes Dodge declared would be held with the prize. We all left within the fifteen minutes, but some of the crew forgot some of their effects and requested leave to go on board for them; this request was denied, nor would this Dodge deliver them up. We told this Dodge that we had not a cent of money, and requested leave to take some of our bread, beef and pork on shore to live on for a day or two until we could find some chance to get home. He replied we should not have a single biscuit; we urged our destitute situation, but all the reply we got was that our situation was nothing to him. When Dodge took us our skipper told him we were more than fifteen miles from land; this Dodge admitted, for from where we lay Cape North bore north by compass, and Cow-head bore SSW. by compass, and on inspection the chart will show we were more than sixteen miles from any shore, and in fact we were all of three miles outside of a line drawn from Cow-bay head to Cape North; but Dodge said we were within three miles of such a line, and on their construction of the treaty that we were a lawful prize; he said he seized us to settle the question. Dodge read the annexed document as his authority and gave it to my father, the skipper, who gave it to me to bring home to the owners.

I got on board the fishing schooner *Emma*, of Portland, and came home with two of my brothers, and left my father and two of the crew at Sidney who were to go to Halifax.

EDWARD DOUGHTY.

CUMBERLAND, MAINE, *August 26, 1844.*

Then the above-mentioned Edward Doughty personally appeared and made solemn oath to the foregoing deposition by him subscribed before me.

JOHN ANDERSON,
Justice of the Peace.

[Inclosure No. 3.]

I, Joshua Doughty, of Portland, in the county of Cumberland and State of Maine, aged fourteen years, on oath declare that I was a boy on board the fishing schooner *Argus*, shipped in April last, and was in her until she was captured by the British cutter *Sylph* on the ninth of July last. I further say that I was present at the noting of the deposition of my brother, Edward Doughty, and that all he has related of our capture and treatment is true.

his
JOSHUA × DOUGHTY.
mark.

Witness:
JOHN ANDERSON.

CUMBERLAND, *ss:*

AUGUST 26, 1844.

Then the above named Joshua Doughty personally appeared and made oath to the foregoing deposition by him subscribed before me.

JOHN ANDERSON,
Justice of the Peace.

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[Inclosure No. 4.]

CONSULATE OF THE UNITED STATES,
Halifax, Nova Scotia, Aug. 19, 1844.

GENTLEMEN: I have to inform you that William Doughty, master of schooner "*Argus*," called at my office on the 17th instant, and stated that his vessel had been seized by one of the colonial cruizers off the Cape Breton coast on the 6th of this month, and was taken into Sidney for an infraction on the British fisheries; or rather from the construction put upon the treaty of 1818 by the crown officers in England, which states that the "three marine miles" shall be from *headlands*. The seizing officer has determined to prosecute the suit, as the attorney general this day informed me; it will be two months ere the admiralty court will be convened. I have endeavored thus far to procure the release of this vessel, but without effect. The expenses in the court are very heavy, and previous to defending a suit, the judge requires security to the amount of three hundred dollars, so that generally speaking it is better to let the suit go by default, and purchase the vessel after condemnation. The master of the *Argus* and two of the crew are here, waiting a passage to Boston; as they have no means you will please establish a credit with Alfred Greenough, esq., Boston, for my account, say to the amount of fifty dollars, or authorize him to pay the masters bill for the amount of his expenses here and passage to Boston. I hold the depositions of Captain Doughty and two of his crew.

With respect,

T. B. LIVINGSTON,
United States Consul.

Messrs. J. & J. STARLING, *Portland.*

Mr. Everett to Lord Aberdeen.

GROSVENOR PLACE, *October 9, 1844.*

The undersigned, envoy extraordinary and minister plenipotentiary of the United States of America, has the honor to transmit to the Earl of Aberdeen, her Majesty's principal Secretary of State for foreign affairs, the accompanying papers relating to the capture of an American fishing vessel the "*Argus*" by a government cutter from Halifax, the "*Sylph*," on the 6th of July last.

In addition to the seizure of the vessel, her late commander, as Lord Aberdeen will perceive from his deposition, complains of harsh treatment on the part of the captors.

The grounds assigned for the capture of this vessel are not stated with great distinctness. They appear to be connected partly by the construction set up by her Majesty's provincial authorities in America, that the line within which vessels of the United States are forbidden to fish, is to be drawn from headland to headland, and not to follow the indentations of the coast, and partly with the regulations established by those authorities, in consequence of the annexation of Cape Breton to Nova Scotia.

With respect to the former point, the undersigned deems it unnecessary, on this occasion, to add anything to the observations

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contained in his note to Lord Aberdeen, of the 25th of May, on the subject of limitations of the right secured to American fishing vessels by the treaty of 1783 and the convention of 1818, in reply to the note of his lordship of the 15th of April on the same subject. As far as the capture of the *Argus* was made under the authority of the act annexing Cape Breton to Nova Scotia, the undersigned would observe that he is under the impression that the question of the legality of that measure is still pending before the judicial committee of her Majesty's privy council. It would be very doubtful whether rights secured to American vessels under public compacts could, under any circumstances, be impaired by acts of subsequent domestic legislation; but to proceed to capture American vessels, in virtue of such acts, while their legality is drawn in question by the home government, seems to be a measure as unjust as it is harsh.

Without enlarging on these views of the subject, the undersigned would invite the attention of the Earl of Aberdeen to the severity and injustice which in other respects characterize the laws and regulations adopted by her majesty's provincial authorities against the fishing vessels of the United States. Some of the provisions of the provincial law, in reference to the seizures which it authorizes of American vessels, were pronounced, in a note of Mr. Stephenson to Viscount Palmerston of the 27th of March, 1841, to be "violations of well-established principles of the common law of England, and of the principles of the just laws of well civilized nations;" and this strong language was used by Mr. Stevenson under the express instructions of his government.

A demand of security to defend the suit from persons so little able to furnish it as the captains of small fishing schooners, and so heavy that, in the language of the Consul at Halifax, "it is generally better to let the suit go by default," must be regarded as a provision of this description. Others still more oppressive are pointed out in Mr. Stevenson's note above referred to, in reference to which the undersigned finds himself obliged to repeat the remark made in his note to Lord Aberdeen of the 10th of August, 1843, that he believes it still remains unanswered.

It is stated by the captain of the "*Argus*" that the commander of the Nova Scotia schooner by which he was captured said that he was within three miles of the line beyond which, "on their construction of the treaty, we were a lawful prize, and that he seized us to settle the question."

The undersigned again feels it his duty, on behalf of his government, formally to protest against an act of this description. American vessels of trifling size, and pursuing a branch of industry of the most harmless description which, however beneficial to themselves, occasions no detriment to others, instead of being turned off the debatable fishing ground—a remedy fully adequate to the alleged evil—are proceeded against as if engaged in the most undoubted infractions of municipal law or the law of nations; captured and sent into port, their crews deprived of their clothing and personal effects, and the vessels subjected to a mode of procedure in the courts which amounts in many cases to confiscation; and this is done to settle the construction of a treaty.

A course so violent and unnecessarily harsh would be regarded by any government as a just cause of complaint against any other

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with whom it might differ in the construction of a national compact. But when it is considered that these are the acts of a provincial government, with whom that of the United States has and can have no intercourse, and that they continue and are repeated while the United States and Great Britain, the only parties to the treaty the purport of whose provisions is called in question, are amicably discussing the matter, with every wish, on both sides, to bring it to a reasonable settlement, Lord Aberdeen will perceive that it becomes a subject of complaint of the most serious kind.

As such, the undersigned is instructed again to bring it to Lord Aberdeen's notice, and to express the confident hope that such measures of redress as the urgency of the case requires will, at the instance of his lordship, be promptly resorted to.

The undersigned avails himself of this opportunity to renew to the Earl of Aberdeen the assurance of his distinguished consideration.

EDWARD EVERETT.

The EARL OF ABERDEEN, &c., &c., &c.

Lord Aberdeen to Mr. Everett.

FOREIGN OFFICE, *October 12, 1844.*

The undersigned, her Majesty's Principal Secretary of State for Foreign Affairs, has the honor to acknowledge the receipt of the note dated the 9th instant, from Mr. Everett, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, bringing forward the complaint of the master of the American schooner *Argus* against the seizure of his vessel off the Cape Breton coast by one of her Majesty's colonial cruisers.

The undersigned has lost no time in referring Mr. Everett's letter to her Majesty's Principal Secretary of State for the colonies, with a request that an inquiry may be instituted into this affair; and the undersigned will again have the honor of communicating with Mr. Everett upon this subject as soon as the result of the inquiry shall have been made known to the undersigned.

The undersigned avails himself of this opportunity to renew to Mr. Everett the assurance of his high consideration.

ABERDEEN.

EDWARD EVERETT, Esq.

Lord Aberdeen to Mr. Everett.

FOREIGN OFFICE, *March 10, 1845.*

The undersigned, her Majesty's principal Secretary of State for Foreign Affairs, duly referred to the Colonial Department the note which Mr. Everett, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, did him the honor to address to him on the 25th of May last, respecting the case of the "*Washington*," fishing vessel, and on the general question of the right of United States fishermen to pursue their calling in the Bay

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of Fundy; and having shortly since received the answer of that department, the undersigned is now enabled to make a reply to Mr. Everett's communication, which he trusts will be found satisfactory.

In acquitting himself of this duty, the undersigned will not think it necessary to enter into a lengthened argument in reply to the observations which have at different times been submitted to her Majesty's government by Mr. Stevenson and Mr. Everett, on the subject of the right of fishing in the Bay of Fundy, as claimed in behalf of the United States' citizens. The undersigned will confine himself to stating that after the most deliberate reconsideration of the subject, and with every desire to do full justice to the United States, and to view the claims put forward on behalf of United States' citizens in the most favorable light, her Majesty's government are nevertheless still constrained to deny the right of United States' citizens, under the treaty of 1818, to fish in that part of the Bay of Fundy which, from its geographical position, may properly be considered as included within the British possessions.

Her Majesty's government must still maintain, and in this view they are fortified by high legal authority, that the Bay of Fundy is rightfully claimed by Great Britain as a bay within the meaning of the treaty of 1818. And they equally maintain the position which was laid down in the note of the undersigned, dated the 15th of April last, that, with regard to the other bays on the British American coasts, no United States' fisherman has, under that convention, the right to fish within three miles of the entrance of such bays as designated by a line drawn from headland to headland at that entrance.

But while her Majesty's government still feel themselves bound to maintain these positions as a matter of right, they are nevertheless not insensible to the advantages which would accrue to both countries from a relaxation of the exercise of that right; to the United States as conferring a material benefit on their fishing trade; and to Great Britain and the United States, conjointly and equally, by the removal of a fertile source of disagreement between them.

Her Majesty's government are also anxious, at the same time that they uphold the just claims of the British crown, to evince by every reasonable concession their desire to act liberally and amicably towards the United States.

The undersigned has accordingly much pleasure in announcing to Mr. Everett, the determination to which her Majesty's government have come to relax in favor of the United States fishermen that right which Great Britain has hitherto exercised, of excluding those fishermen from the British portion of the Bay of Fundy, and they are prepared to direct their colonial authorities to allow henceforward the United States fishermen to pursue their avocations in any part of the Bay of Fundy, provided they do not approach except in the cases specified in the treaty of 1818, within three miles of the entrance of any bay on the coast of Nova Scotia or New Brunswick.

In thus communicating to Mr. Everett the liberal intentions of her Majesty's government, the undersigned desires to call Mr. Everett's attention to the fact that the produce of the labor of the British colonial fishermen is at the present moment excluded by prohibitory duties on the part of the United States from the markets of that country; and the undersigned would submit to Mr. Everett that the

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moment at which the British government are making a liberal concession to United States' trade might well be deemed favorable for a counter concession on the part of the United States to British trade, by the reduction of the duties which operate so prejudicially to the interests of the British colonial fishermen.

The undersigned has the honor to renew to Mr. Everett the assurances of his high consideration.

ABERDEEN.

Lord Aberdeen to Mr. Everett.

FOREIGN OFFICE, *March 10, 1845.*

The undersigned, her Majesty's principal Secretary of State for Foreign Affairs, in his note of the 12th of October last, had the honor to inform Mr. Everett, envoy extraordinary and minister plenipotentiary of the United States of America, that he had referred his note of the 9th of that month, and its enclosures respecting the "*Argus*" fishing vessel, to the colonial office, in order that inquiries might be made into that matter. Those inquiries having now been completed, the undersigned proceeds to make Mr. Everett acquainted with the result of them. The best mode of accomplishing this object will be by laying before Mr. Everett *in extenso* the whole of the papers relative to the case in question, which the undersigned has received from the colonial department, and which the undersigned has accordingly the honor to enclose herewith.

As the point of the construction of the convention of 1818 with reference to the rights of fishing on the coasts of the Anglo-American dependencies, by citizens of the United States, is treated in another note of the undersigned of this day's date, relative to the case of the *Washington*, the undersigned abstains from again touching upon that subject, and will confine himself in this note to the point of the harsh treatment of the patron and crew of the *Argus* by the commander of the Nova Scotia revenue cruiser *Sylph*, which is alleged in Mr. Everett's note of the 9th of October and its enclosures.

The undersigned must premise by observing that the affidavits of the parties who bring this charge against the commander of the *Sylph* are not only confused and obscure, but contradictory in themselves, and little calculated by their general tone to inspire confidence in the persons who make them. One of the parties, being one of the crew of the *Argus*, declares on oath that the capture of the *Argus* by the *Sylph*, took place on the 6th of July, while the other party, being equally one of the crew, declares on oath that the capture took place on the 9th of July. The capture did, in fact, take place on the 7th of August. These and other inaccuracies in the statements of the deponents show, to say the least of it, the light respect in which they must have held the obligation of an oath.

But Mr. Everett will moreover find, by a careful perusal of the letter addressed to Mr. Dodd by the collector of customs at Sydney, that the master of the *Argus* was not only not brought forward at all, but that he distinctly declared more than once to the collector that Mr. Dodd had treated him like a gentleman.

With regard to the general charge of harsh treatment brought against the commander of the "*Sylph*" by the two Doughtys, de-

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ponents, the undersigned may fearlessly refer Mr. Everett to Mr. Dodd's own declaration, supported as it is by that of Mr. Davenport, the collector of customs, already alluded to; and the undersigned has little doubt that a perusal of those papers will convince Mr. Everett that not only no harsh treatment was practised against the master and crew of the "*Argus*" but that they were treated, from first to last, with the utmost kindness and consideration. In fact, from Mr. Dodd's declaration, it clearly appears that nearly the whole of the affidavits of the two Doughtys, who depose against him, form a tissue of wilful and shameless misrepresentations; the more culpable because they exhibit the most flagrant ingratitude towards Mr. Dodd, who not only allowed them every indulgence, and stood between them and the collector of customs, in order to soften the rigor of the law, which the latter considered it his duty to carry into full effect, but, after the condemnation of their vessel, actually conveyed the master and two of his men, who were witnesses for him, to Halifax, in the "*Sylph*," at his (Mr. Dodd's) own expense, in consequence of having heard that they were anxious to proceed thither in the hope of obtaining the release of their vessel.

The undersigned apprehends that after taking cognizance of the papers to which he has referred, Mr. Everett will allow that there is no occasion for his adding one word to that evidence, in order to prove to Mr. Everett that this is a matter in which the whole of the facts have been grossly misrepresented by gratuitous malice, and that the interposition of the authority of the United States government, for the protection of the complainants, has been claimed on false pretenses.

The undersigned has the honor to renew to Mr. Everett the assurance of his high consideration.

ABERDEEN.

[Inclosure No. 1.]

Mr. Stephen to Viscount Canning.

DOWNING STREET, *January 9, 1845.*

MY LORD: With reference to your lordship's letter of the 16th October, I am directed by Lord Stanley to transmit to you, for the information of the Earl of Aberdeen, the enclosed copy of a despatch which has been received from the Lieutenant Governor of Nova Scotia, relative to the seizure of the American fishing vessel *Argus*, which forms the subject of the note from the minister of the United States, enclosed in your above mentioned letter.

I have, &c., &c.,

JAMES STEPHEN.

VISCOUNT CANNING, &c., &c.

[Sub-inclosure.]

Lord Falkland to Lord Stanley.

GOVERNMENT HOUSE,
Halifax, December 17, 1844.

MY LORD: I have the honor to acknowledge the receipt of your despatch, No. 191, of the 26th October, enclosing a letter from the

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minister of the United States of America at London, complaining of the "seizure of a vessel named the *Argus*, which was found fishing off Cape Breton under similar circumstances to those of the *Washington*, and stating that the captors had been harsh in their treatment towards the master of the *Argus;*" and likewise concerning depositions to that effect signed by Edward and Joshua Doughty.

After the correspondence I have lately had with your lordship as to the true construction to be put on the convention of 1818, on the interpretation of which the legality or illegality of the capture of the *Argus* as well as of the *Washington*, of course depends, I feel it is unnecessary for me to enter again on that branch of the subject; and from the difficulty of communication by post at this season of the year, I am not at present in a position to meet the allegations contained in Mr. Everett's representation with respect to the harsh treatment of the skipper and crew of the *Argus* by the captain and crew of the provincial schooner. These charges have, however, taken me by surprise, as William Doughty; the commander of the *Argus*, (and apparently from the similarity of name, the brother of the other two men who feel themselves aggrieved,) was in Halifax some days, and in communication with the attorney general, to whom he made no complaint of having been ill-treated or harshly dealt with by Mr. Dodd, whose general character, as well as the kindly feeling he evinced towards William Doughty, forbids me readily to give credence to any accusation of such a nature, that may be brought against him, until he shall have had an opportunity of offering a counter statement. I have, in consequence, transmitted to Mr. Dodd a copy of the affidavits of Edward and Joshua Doughty, and required an explanation from him, which I trust to receive in sufficient time to allow of my addressing your lordship satisfactorily on this topic by the next packet.

I have the honor, &c.,

FALKLAND.

LORD STANLEY, &c., &c.

[Inclosure No. 2.]

Mr. Hope to Viscount Canning.

DOWNING STREET, *January 29, 1845.*

MY LORD: With reference to my letter of the 9th instant I am directed by Lord Stanley to transmit to your lordship, for the information of the Earl of Aberdeen, the enclosed copy of a further despatch from the lieutenant-governor of Nova Scotia, transmitting the answer of Mr. Dodd (the commander of the provincial revenue-schooner *Sylph*, at the time the American schooner *Argus* was captured by the former vessel) to the charge of harsh treatment towards the master and crew of the *Argus*, on the part of Mr. Dodd.

I have the honor, &c.,

G. W. HOPE.

VISCOUNT CANNING, &c., &c.

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[Sub-inclosure 1.]

Lord Falkland to Lord Stanley.

GOVERNMENT HOUSE,
Halifax, January 2, 1845.

MY LORD: In accordance with the promise contained in my despatch No. 281, dated 17th December, 1844, I have the honor to enclose copies of correspondence between the provincial secretary of Nova Scotia and Mr. Philip Dodd, the officer in command of the provincial revenue-schooner *Sylph*, at the time the American schooner *Argus* was captured by that vessel on the 6th of August last.

Mr. Dodd's letter is accompanied by a statement of Mr. Davenport, the collector of customs at Sydney, Cape Breton, which, taken with his own letter, appears to me, as I trust it will to your lordship, completely and satisfactorily to refute the charge of harsh treatment towards the master and crew of the *Argus*, on the part of Mr. Philip Dodd.

I think it right to remark that Edward and Joshua Doughty, who have preferred these charges, seem to have been simple mariners on board the *Argus*, of the same name as the commander, but not the skipper of that vessel, who is himself called William Doughty, and therefore, I hope, guiltless of the ingratitude which Mr. Dodd has attributed to him from similarity of name; but whether this be so or not, Mr. Dodd must, I think, be perfectly acquitted of having been harsh in his treatment of the fishermen of the United States who composed the crew of the *Argus*.

I have the honor, &c., FALKLAND.

LORD STANLEY, &c., &c.

[Sub-inclosure 2.]

Provincial Secretary to Mr. Dodd.

PROVINCIAL SECRETARY'S OFFICE,
Halifax, December 13, 1844.

SIR: I have it in command from the lieutenant-governor to transmit to you the enclosed extract of a despatch which his Excellency has received from her Majesty's principal Secretary of State for the colonies, by which you will perceive that the minister of the United States at London has complained of the treatment which the master and crew of the American fishing vessel "*Argus*," lately seized by you, experienced from the captors, and his Excellency is pleased to call upon you for a full explanation of your proceedings on the occasion in question, in order that her Majesty's government may be able to answer the complaint of the American minister, the substance of which is contained in the second accompanying paper.

I have, &c.,

RUPERT D. GEORGE.

PHILIP DODD, Esq.

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[Sub-inclosure 2.]

Mr. Dodd to the Provincial Secretary.

SYDNEY, CAPE BRETON,
December 23, 1844.

SIR: I have the honor to acknowledge the receipt of your letter of the 13th instant with an extract of a despatch received by his Excellency, the lieutenant-governor from her Majesty's principal Secretary of State for the colonies, having reference to a charge against me as late commander of the revenue schooner *Sylph*, for harsh treatment to the master and crew of the American fishing vessel *Argus* seized by me, and requesting a full explanation of my proceedings on the occasion in question. In reply I have to state, for the information of his Excellency, the lieutenant-governor, that when in command of the "*Sylph*" on the 6th of August last, then cruizing round the coast of Cape Breton, I discovered the *Argus* some miles off Saint Anne's with her crew actually employed fishing; and although more than three miles from any land, still much within the bay that is formed by a straight line drawn from Cape North to the northern head of Cow bay, and consequently I felt it my duty to take her into Sydney, being the nearest port to me at the time, at which an officer of her Majesty's customs was stationed. In corroboration of this part of my statement, I beg respectfully to refer to the affidavits made by two disinterested persons on board the "*Sylph*" at the time of seizure, at present in the office of the attorney-general at Halifax, and which I would now have renewed for the purpose of accompanying this communication, but the persons making them are out of the island of Cape Breton, and consequently out of my reach. The fact of the owners of the *Argus* allowing her to be condemned in the admiralty court of Halifax, without a defence of any kind whatever, must, to most minds, carry a conviction that the vessel when seized was not within the limits in which subjects of the United States are permitted to fish on the coasts of this province. Had it been otherwise, as stated in the affidavit of Doughty, that the vessel was three miles outside the line before referred to,—how is it that a defence was not made to the action, and the important fact at least attempted to be proved, which if successful, would have liberated the vessel and cargo, and made me liable to an action for damages? But all on board the *Argus* were too well satisfied of their liability, and of their having violated the treaty which excludes them from our shores, to have risked the test of an examination, as witnesses in the case, and therefore they abandoned a defence as hopeless. The vessel, as I have already stated, was brought into the harbor of Sydney, which was on the seventh, in the morning, when I gave her in charge, agreeably to my instructions, to the collector of customs at the port, whose letter to me of this day's date, herewith enclosed, I beg to refer to for a more detailed account and perfect confutation of the charge of harsh treatment by me towards the master and crew of the "*Argus*."

The "*Argus*," on coming into the harbor of Sydney, was accompanied by another American fishing vessel, both in the employ of the same owners, for the purpose of giving assistant to the crew of the "*Argus*." They had also the advice and assistance of the American

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consul stationed at the port of Sydney, and yet, with all this assistance at hand, I was most desirous of doing all in my power to make their situation as comfortable as the circumstances of their case would permit; and after their remaining on board the "*Argus*" full thirty hours from their arrival in Sydney, thus giving them every opportunity to collect their private property and be prepared to quit the vessel; still, at the expiration of that time, I called with Doughty, the master, upon the collector of the customs, and requested him to permit their remaining a further time on board, but which he declined, for the reasons stated in his letter before referred to. I have every reason for believing that no part of their clothing or private property was detained from them; for if such had been the case I am convinced Doughty would have mentioned the subject to me; and as to my being privy to such an act, I am satisfied never once came across the master's mind until instigated to make this base charge long after leaving Cape Breton, for up to the period of his parting with me in Halifax, he repeatedly, in the presence of others, thanked me for my kind treatment of himself and crew, and the same sentiments he must have expressed to his consul at Sydney, who also thanked me for what he was pleased to call my generous conduct towards them. Several days after the "*Argus*" had been in charge of the collector of the customs, and I was preparing to leave with the "*Sylph*" for Halifax, I discovered that Doughty, with two of his crew who were witnesses for him, were anxious to proceed there, with the hope of obtaining a release of the "*Argus*." Upon representing this to his Excellency, the Lieutenant Governor, and there being no other vessel in port at the time in which they could obtain a passage to Halifax, I, without a request on their part, offered them a passage in the "*Sylph*," and actually took them there without their being at any expense whatever. From the affidavit of Doughty being so completely at variance with truth I cannot help thinking he never could have supposed I would be called upon to answer it, for he knew full well how readily and perfectly his charge could be disproved; and were the consul of the United States still in Sydney, I would have no hesitation in being bound by a representation of the case as given to him by Doughty and his crew, together with what he himself witnessed of my conduct towards them; but that gentleman is now in Newfoundland, and I am therefore unable to obtain from him any corroboration of what I have now stated, but which, on his return to Cape Breton, I am quite satisfied can, if required, be procured. After the gross misrepresentation of Doughty, every line of his affidavit being marked with falsehood, it would almost induce me, should I again be honored with the command of one of the provincial revenue vessels not to go out of my way for the mere purpose of extending to the class of persons to which Mr. Doughty belongs those acts of kindness and courtesy with which he was favored, but which have been returned by the blackest ingratitude.

I have, &c.,

P. S. DODD.

Sir RUPERT D. GEORGE,
Bart., &c., &c., &c.

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[Sub-inclosure 4.]

CUSTOM-HOUSE, SYDNEY, *December 23, 1844.*

SIR: I beg to state with reference to the complaint of Doughty, late master of the United States schooner '*Argus*,' that on the afternoon of the day on which that vessel was placed in custody of the customs, having occasion to go into the town, I met two seamen in conversation with a gentleman, to whom, in very excited language, they were telling the story of that vessel's capture, and asserting that you had been guilty of great harshness to the crew.

I was at once referred to as the proper person to whom any complaint should be made, and then asked the man who he was and what he knew of the affair. He said he was the master of a fishing schooner belonging to the same owners as the '*Argus;*' that he had been fishing in company with her, concealed by a fog-bank at the time of the '*Argus*' seizure; that having learned she had been captured by the *Sylph*, he thought it right to come to Sydney and render the crew of the *Argus* any assistance that they might require. As you were not then in town, I did not communicate with you on the subject, but on the following morning Doughty was sent for to attend at the custom-house, and I then related to him the rumor circulated by the master of the other craft, and closely examined as to the truth of such and of all the circumstances connected with the seizure. He then expressed very strong feelings of indignation at the baseness of the authors of any report prejudicial to you. He assured me that no fault whatever could be found either with you or the *Sylph's* people, and twice or thrice repeated to me, "Mr. Dodd has behaved to us like a gentleman." At this moment, the man's earnestness of manner and these expressions, are most vividly impressed on my recollection.

To weigh the degree of accuracy which may be supposed to attach to the other assertions made by Doughty, I will remind you that it was on the morning of the 7th August, (not July as stated in the affidavit) that the *Argus* was placed in charge, the crew were not interfered with on that day, but were instructed to place themselves in communication with the United States consul; but on the day following the usual inventory was taken of the vessel's cargo, stores, sails, rigging, anchors, cables, and general fittings; and having given a receipt to you for these (copy being also offered the master) I (not you as stated in the affidavit) desired the waiter and searcher of the port to request the personal baggage of the crew should then be removed, as the vessel required to be anchored in the stream, to prevent her being damaged as she must be where she then lay; the waiter at the same time offered the Queen's warehouse for the temporary reception of the baggage. After I had given this order, you may probably recollect bringing the master up to the custom-house and joining him in an application to allow the crew to remain on board the *Argus*, and the reasons I assigned for refusing these were: First, that having been a receipt to you, and also to Doughty I had become personally responsible for all the goods named in the inventory; that in a former case the *Hero*, of Eastport, seized in 1838, under similar circumstances the crew had been thus billeted on the vessel and took away everything movable, for which I was of course accountable, and Doughty himself said he would expect everything returned to

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him in case of release. Secondly, because there was no reason why the regular course of procedure in all similar cases should be deviated from. The *Argus* crew had the means of immediate transport home in the sister craft, whose master had reported to me he came into port to render any assistance they might require. Besides, the consul was on the spot to provide all requisites, and there were ample means of shipping to the States. No less than thirteen vessels, British and United States, were loading for ports in the Union at that very time, and also as the *Sylph* must immediately resume her cruise, I did not think it prudent to allow a foreign prize to continue in charge of her own hostile crew, with a sister ship lying alongside ready to render any assistance required in a recapture, very easily effected, the *Sylph* once again at Sea.

The crew of the *Argus* remained on board that vessel from the time she was brought into port, the night of the 7th August to about mid-day of the 8th, and therefore the story about their removal in fifteen minutes is not correct, and not less inaccurate is Doughty's assertion that the crew were denied any of their personal effects, because later on the 9th than the events I have narrated, Doughty again applied at the custom-house for a hat said to have been left behind, the *Argus* being then removed to her final anchorage. I gave him an order to the ship keeper to give up the hat, and everything belonging to the master and crew, some of whom subsequently brought the hat on shore, together with some articles of cabin use, omitted in taking the inventory. This is a simple narrative of the facts.

I am, &c., HENRY DAVENPORT,
Collector.

P. S. DODD, Esq., &c., &c., &c.

Mr. Everett to Lord Aberdeen.

GROSVENOR PLACE, *March 25, 1845.*

The undersigned, envoy extraordinary and minister plenipotentiary of the United States of America, has the honor to acknowledge the receipt of a note of the 10th instant from the Earl of Aberdeen, her Majesty's principal Secretary of State for foreign affairs, in reply to the communication of the undersigned of the 15th of May last, on the case of the "*Washington*," and the construction given by the government of the United States to the convention of 1818, relative to the right of fishing on the coasts of Nova Scotia and New Brunswick.

Lord Aberdeen acquaints the undersigned, that, after the most deliberate reconsideration of the subject, and with every desire to do full justice to the United States and to view the claims put forward on behalf of their citizens in the most favorable light, her Majesty's government are nevertheless still constrained to deny the right of citizens of the United States, under the treaty of 1818, to fish in that part of the Bay of Fundy which from its geographical position may properly be considered as included within the British possessions; and also to maintain that, with regard to the other bays

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on the British American coasts, no United States fisherman has, under that convention, the right to fish within three miles of the entrance of such bay, as designated by a line drawn from headland to headland at that entrance.

Lord Aberdeen, however, informs the undersigned that, although continuing to maintain these positions as a matter of right, her Majesty's government are not insensible to the advantages which might accrue to both countries from a relaxation in its exercise; that they are anxious, while upholding the just claims of the British crown, to evince by every reasonable concession their desire to act liberally and amicably towards the United States; and that her Majesty's government have accordingly come to the determination "to relax in favor of the United States fishermen the right which Great Britian has hitherto exercised of excluding those fishermen from the British portion of the Bay of Fundy, and are prepared to direct their colonial authorities to allow, henceforward, the United States fishermen to pursue their avocations in any part of the Bay of Fundy, provided they do not approach, except in the cases specified in the treaty of 1818, within three miles of the entrance of any bay on the coast of Nova Scotia or New Brunswick."

The undersigned receives with great satisfaction this communication from Lord Aberdeen, which promises the permanent removal of a fruitful cause of disagreement between the two countries, in reference to a valuable portion of the fisheries in question. The government of the United States, the undersigned is persuaded, will duly appreciated the friendly motives which have led to the determination on the part of her Majesty's government announced in Lord Aberdeen's note, and which he doubts not will have the natural effect of acts of liberality between powerful states, of producing benefits to both parties, beyond any immediate interest which may be favorably affected.

While he desires, however, without reserve, to express his sense of the amicable disposition evinced by her Majesty's government on this occasion in relaxing in favor of the United States the exercise of what, after deliberate reconsideration, fortified by high legal authority, is deemed an unquestioned right of her Majesty's government, the undersigned would be unfaithful to his duty did he omit to remark to Lord Aberdeen that no arguments have at any time been adduced to shake the confidence of the government of the United States in their own construction of the treaty. While they have ever been prepared to admit, that in the letter of one expression of that instrument there is some reason for claiming a right to exclude United States fishermen from the Bay of Fundy, (it being difficult to deny to that arm of the sea the name of "bay" which long geographical usage has assigned to it,) they have ever strenuously maintained that it is only on their own construction of the entire article that its known design in reference to the regulation of the fisheries admits of being carried into effect.

The undersigned does not make this observation for the sake of detracting from the liberality evinced by her Majesty's government in relaxing from what they regard as their right; but it would be placing his own government in a false position to accept as mere favor that for which they have so long and strenuously contended as due to them under the convention.

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It becomes the more necessary to make this observation, in consequence of some doubts as to the extent of the proposed relaxation. Lord Aberdeen, after stating that her Majesty's government felt themselves constrained to adhere to the right of excluding the United States fishermen from the Bay of Fundy, and also with regard to other bays on the British American coasts, to maintain the position that no United States fisherman has, under that convention, the right to fish within three miles of the *entrance* of such bays, as designated by a line drawn from headland to headland at that entrance, adds, that "while her Majesty's government still feel themselves bound to maintain these positions as a matter of right, they are not insensible to the advantages which would accrue to both countries from the relaxation of that right."

This form of expression might seem to indicate that the relaxation proposed had reference to both positions; but when Lord Aberdeen proceeds to state more particularly its nature and extent, he confines it to a permission to be granted to "the United States fishermen to pursue their avocations in any part of the Bay of Fundy, provided they do not approach except in the cases specified in the treaty of 1818, within three miles of the *entrance* of any bay on the coast of Nova Scotia and New Brunswick," which entrance is defined, in another part of Lord Aberdeen's note, as being designated by a line drawn from headland to headland.

In the case of the "*Washington*," which formed the subject of the note of the undersigned of the 25th May, 1844, to which the present communication of Lord Aberdeen is a reply, the capture complained of was in the waters of the Bay of Fundy; the principal portion of the argument of the undersigned was addressed to that part of the subject; and he is certainly under the impression that it is the point of greatest interest in the discussions which have been hitherto carried on between the two governments, in reference to the United States' right of fishery on the Anglo-American coasts.

In the case, however, of the "*Argus*," which was treated in the note of the undersigned of the 9th of October, the capture was in the waters which wash the north-eastern coast of Cape Breton, a portion of the Atlantic ocean intercepted indeed between a straight line drawn from Cape North to the northern head of Cow bay, but possessing none of the characters of a bay, (far less so than the Bay of Fundy,) and not called a "bay" on any map which the undersigned has seen. The aforesaid line is a degree of latitude in length; and as far as reliance can be placed on the only maps (English ones) in the possession of the undersigned on which this coast is distinctly laid down, it would exclude vessels from fishing grounds which might be thirty miles from the shore.

Lord Aberdeen, in his note of the 10th instant, on the case of the "*Argus*," observes that, "as the point of the construction of the convention of 1818, in reference to the right of fishing in the Anglo-American dependencies by citizens of the United States, is treated in another note of the undersigned of this date, relative to the case of the "*Washington*," the undersigned abstains from again touching on that subject.

This expression taken by itself would seem to authorize the expectation that the waters where these two vessels respectively were captured would be held subject to the same principles, whether of

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restriction or relaxation, as indeed all the considerations which occur to the undersigned as having probably led her Majesty's government to the relaxation in reference to the Bay of Fundy, exist in full and even superior in reference to the waters on the northeastern coast of Cape Breton, where the "*Argus*" was seized. But if her Majesty's provincial authorities are permitted to regard as a "bay" any portion of the sea which can be cut off by a direct line connecting two points of the coast, however destitute in other respects of the character usually implied by that name, not only will the waters on the north eastern coast of Cape Breton, but on many other parts of the shores of the Anglo-American dependencies where such exclusion has not yet been thought of, be prohibited to American fishermen. In fact, the waters which wash the entire south-eastern coast of Nova Scotia, from Cape Sable to Cape Canso, a distance on a straight line of rather less than three hundred miles, would in this way constitute a bay from which United States fishermen would be excluded.

The undersigned, however, forbears to dwell on this subject, being far from certain, on a comparison of all that is said in the two notes of Lord Aberdeen of the 10th instant, as to the relaxation proposed by her Majesty's government, that it is not intended to embrace the waters of the northeastern coasts of Cape Breton, as well as the Bay of Fundy.

Lord Aberdeen, towards the close of the note in which the purpose of her Majesty's government is communicated, invites the attention of the undersigned to the fact that British colonial fish is, at the present time, excluded by prohibitory duties from the markets of the United States, and suggests that the moment at which the British government are making a liberal concession to United States trade, might be deemed favorable for a counter concession on the part of the United States to British trade, by the reduction of duties which operate so prejudicially to the interests of British colonial fishermen.

The undersigned is of course without instructions which enable him to make any definite reply to this suggestion. It is no doubt true that the British colonial fish, as far as duties are concerned, enters the United States market, if at all, to some disadvantage. The government of the United States, he is persuaded, would gladly make any reduction in these duties which would not seriously injure the native fishermen; but Lord Aberdeen is aware that the encouragement of this class of the sea-faring community, has ever been considered, as well in the United States as Great Britain, as resting on peculiar grounds of expediency. It is the great school not only of the commercial but of the public marine, and the highest considerations of national policy require it to be fostered.

The British colonial fishermen possess considerable advantages over those of the United States. The remoter fisheries of Newfoundland and Labrador are considerably more accessible to the colonial than to the United States fishermen. The fishing grounds on the coasts of New Brunswick and Nova Scotia, abounding in cod, mackerel and herring, lie at the doors of the former; he is therefore able to pursue his avocation in a smaller class of vessels, and requires a smaller outfit; he is able to use the net and the seine to great advantage in the small bays and inlets along the coast, from which the fishermen of the United States, under any construction of the treaty, are

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excluded. All or nearly all the materials of ship building, timber, iron, cordage and canvass are cheaper in the colonies than in the United States, as are salt, hooks and lines. There is also great advantage enjoyed in the former in reference to the supply of bait and curing the fish. These, and other causes, have enabled the colonial fishermen to drive those of the United States out of many foreign markets, and might do so at home but for the protection afforded by the duties.

It may be added that the highest duty on the kinds of fish that would be sent to the American market, is less than a half-penny per pound, which cannot do more than counter-balance the numerous advantages possessed by the colonial fishermen.

The undersigned supposes, though he has no particular information to that effect, that equal or higher duties exist in the colonies on the importation of fish from the United States.

The undersigned requests the earl of Aberdeen to accept the assurance of his high consideration.

EDWARD EVERETT.

Mr. Everett to Lord Aberdeen.

GROSVENOR PLACE, *April 2, 1845.*

The undersigned, envoy extraordinary and minister plenipotentiary of the United States of America, has had the honor to receive a note of the 10th ultimo, from the Earl of Aberdeen, her Majesty's principal Secretary of State for foreign affairs, in reply to the note of the undersigned of the 9th of October last, relative to the case of the United States fishing vessel, the "*Argus*," seized on the 6th of July last, off the north-eastern coast of Cape Breton by the provincial armed vessel the "*Sylph*."

In the above mentioned note of the 9th of October, after alluding very briefly to the alleged harsh treatment of the master and crew of the "*Argus*" by the captors, and adverting to the general subject of the contested right of the fishermen of the United States, in the waters of the Anglo-American provinces, the undersigned dwelt with all the earnestness in his power on the extremely objectionable character of the course pursued by the provincial authorities in presuming to decide for themselves a question under discussion between the two governments.

Of the often repeated complaints of the government of the United States on this point, a subject distinct from the general question as to the limits of the fishing privilege secured by the convention of 1818, to the people of the United States, no notice has been taken in any communication of Lord Aberdeen to the undersigned.

In reference to the complaint of "harsh treatment" in the case of the "*Argus*," the undersigned hastens to do an act of justice to the master of that vessel, by observing that it was through the inadvertance of the undersigned, that this complaint was said to be made in the deposition of "the late commander of the vessel." The letter of the American consul at Halifax, a copy of which accompanied the note of the undersigned of the 9th of October, mentions a deposition of the master; and this circumstance with the similarity of the name,

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led the undersigned to the too hasty conclusion, that one of the affidavits forwarded to him from Washington, and by him transmitted to Lord Aberdeen, was the deposition in question. Such, however, is not the case. The depositions accompanying the note of the undersigned, are those of two of the crew, sons of the master, one of them a boy of fourteen. The Earl of Aberdeen will perceive from Lord Falkland's letter of the 2d of January, that his lordship had conjectured that such was the fact, and was consequently disposed to exonerate William Doughty, the master of the vessel, from the charge of ingratitude, and of having made a deposition at home at variance with his professions of thankfulness both at Sydney and Halifax.

It does not appear that Captain Doughty had returned home at the time that Messrs. J. and J. Starling, of Portland, in Maine, the owners of the "*Argus*," represented the case to the Department of State at Washington.

With respect to the depositions of Edward and Joshua Doughty, the undersigned agrees with Lord Aberdeen that they are "confused and obscure," and that they are in some important particulars inaccurate, and he has much pleasure in adding that Mr. Dodd, the commander of the "*Sylph*," so far from treating the crew of the "*Argus*" with harshness, seems to have manifested to them every possible kindness consistent with the performance of his duty, as an officer charged with the execution of the provincial law.

But although the depositions of the Doughtys are materially incorrect, the undersigned is inclined to think them not open to the charge of international falsehood, wilful and shameless misrepresentation, and gratuitous malice ascribed to them by Mr. Dodd with the sanction of Lord Aberdeen. The statements for instance of Edward Doughty that the capture of the "*Argus*" took place on the 6th of July, and of Joshua Doughty that it took place on the 9th of July, to which Lord Aberdeen alludes as a contradiction showing a light respect to the obligation of an oath, are the undersigned thinks, hardly sufficient ground for so heavy an imputation. The capture having taken place on the 6th of August (not on the 7th as stated by Lord Aberdeen,) both the depositions are in that respect of course inaccurate; but it is in a point of no prejudice to the captors, nor benefit to the deponents or their cause. Had they combined to swear to a false account, they would not have differed in details of this kind, nor would they have assigned a wrong day to the capture. The deposition was sent to the undersigned not in the original, but in a copy apparently written in haste and containing, either for that reason or the rapidity with which it was taken down before the magistrate, several clerical errors. The undersigned is disposed to think that the words "on the ninth" in the deposition of Joshua Doughty should read "in the month." This would remove the only point of contradiction between the brothers, and leave no error in reference to the date, but that of "July" for "August," an error for which the undersigned is unable to account, but which from its nature cannot well be other than inadvertent.

The report of Mr. Davenport, the collector, is itself not wholly free from contradiction in some important points. He observes in the earlier portion of it that the *Argus* was brought into Sydney in the morning of the seventh of August as was the fact, but in the last paragraph he says that this took place on the night of the seventh;

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and after having detailed at length in the body of his statement the transactions of the 8th instant, he adverts in its conclusion to an incident which, as he says, took place "later on the 9th than the events I have narrated." The undersigned by no means points out these errors for the sake of impeaching the general character of Mr. Davenport's statement, but to show that similar errors on the part of the Doughtys are not conclusive proof of wilful misrepresentation and falsehood.

As far as Mr. Dodd's conduct is concerned, the greatest inaccuracy of the deposition of the Doughtys consists in ascribing to him what was done by order of Mr. Davenport, the collector of Sydney. It appears by Mr. Davenport's statement that these orders were not given by him in person, but by a "waiter or searcher." The undersigned thinks that it is very much the custom of officers of this class in delivering orders not to describe very particularly from what superior functionary the orders emanate; and it seems natural that these uninformed fishermen, the Doughtys, might have supposed that the orders brought them to quit their vessel and the prohibition to remove any of her stores with them, proceeded from the officer by whom the capture was made. The undersigned sees no bad motive which they could have had in ascribing to Mr. Dodd what was done by Mr. Davenport. Their doing so may argue ignorance and carelessness, but not necessary malice.

It is worthy of remark that Mr. Dodd does not, with one exception, seem to discredit the statement of the Doughtys as to what took place before there was any opportunity to fall into this confusion, that is, after the capture and before the bringing into port, although that portion of their statement contains a report of Mr. Dodd's observations about what is called the "annexation document" and his having seized the vessel in order to settle a question under a treaty, which if incorrectly alleged, it may be thought he could hardly have failed to contradict. Mr. Dodd states, indeed, that it was impossible that the master of the *Argus* as asserted by the deponents, could have thought himself outside the line drawn from Cape North to the head of Cow bay, because if he had so thought he would have gone to trial against the captors at Halifax. But Lord Aberdeen is aware that it is one of the grievances which the government of the United States has had repeatedly to complain of, and which was prominently brought forward in connection with this very capture by the undersigned in his letter of the 9th of October, that no defence can be made in such a suit without giving security in $300, besides encountering the delay and the heavy expenses of court. After adverting to this fact, the consul at Halifax in his letter of the 19th August, which was sent by the undersigned to Lord Aberdeen with his note of 9th October, adds, "so that, generally speaking, it is better to let the suit go by default and purchase the vessel after condemnation."

Mr. Dodd on this subject proceeds to say, that "all on board the *Argus* were too well satisfied of their liability and of their having violated the treaty which excludes them from our shores, to have asked the test of an examination as witnesses in the case, and therefore they abandoned the attempt as useless." But not to dwell on the circumstance that Mr. Dodd himself opposes no specific contradiction to the assertion of the Doughtys that he stated that he made

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the capture "to settle the question" as to the construction of the treaty, it is not to be conceived that he should be so uninformed on this subject as not to know that not merely on the part of the fishermen as a body, but on that of their government, the validity of the British construction of the treaty has always been contested, and that if the fishermen of the United States forbear to act on the construction which their own government has ever maintained, it is simply to avoid capture by the provincial armed vessels.

Admitting that the Doughtys may innocently have thought that the orders which were brought by "the searcher" proceeded not from the collector but from the officer who captured the vessel, the undersigned does not find in this statement itself much further discrepancy from the admissions of Mr. Davenport, than may always be expected between the representations of an officer of intelligence justifying his conduct to his superiors, and those of ignorant men telling their story to their employers under a strong sense of recent loss and oppression.

Mr. Davenport in one point makes a charge against the Doughtys for which there is no foundation in their narrative. He says, "the crew of the *Argus* remained on board that vessel from the time she was brought into port, the night of the 7th of August to about midday of the 8th, and therefore the story about their removal in fifteen minutes is not correct." But the Doughtys expressly mention that the crew of the *Argus* remained on board from the time the vessel was brought in on the morning of the 7th till ten o'clock of the 8th. The "fifteen minutes" ran from the time the order was given to leave the vessel, not from their arrival in port, and without any reference to the deposition of the Doughtys, the undersigned would infer from the statement of the collector himself, that after the inventory was taken on the morning of the 8th, the crew were peremptorily required to quit the vessel; and as her "stores" were included in the inventory, it is equally plain that they were not permitted to carry the means of subsistence away with them. It appears from his own report that Mr. Davenport, even when urged to do so by Mr. Dodd, refused to relax in any degree the rigor of the law towards those whom he thinks proper to designate as the hostile crew of the *Argus*.

The conduct of Mr. Dodd, in endeavoring to procure from the collector permission for these poor fishermen to stay on board their own vessel another day, (for it must be remembered she was not yet judicially proceeded against, and that therefore in the humane intendment of the law her master was as yet innocent of its violation,) was certainly kind, and his furnishing, unsolicited, a gratuitous passage to Halifax for the captain of the *Argus* and two of his crew, still more so; although this was not done, as Lord Aberdeen appears to be under the impression, "after the condemnation of the vessel," but before the commencement of any judicial proceeding against her. It was, however, not the less meritorious and the undersigned sincerely regrets the injustice done him in the deposition of the Doughtys. Could he now deem that injustice wilful, or should it on further inquiry so appear, the undersigned would not fall behind Lord Aberdeen in his emphatic reprobation of it.

The undersigned hopes, however, that the foregoing suggestions will lead Lord Aberdeen to a judgment somewhat more favorable on that point. That the depositions of the Doughtys were given under

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feelings of great irritation is quite evident. This furnishes no excuse for exaggeration and mis-statement; still less does it palliate falsehood and perjury. Of these crimes the undersigned is inclined to think them innocent; and Lord Aberdeen will agree with him in regarding some coloring in statements made under imaginary wrong, as almost inseparable from human frailty.

In this case the undersigned is constrained to add that in the judgment of the government of the United States the wrong was real and extreme, not in the harsh treatment on the part of the capturing officer, (a charge against Mr. Dodd to which no prominence was originally given by the undersigned, which he has much pleasure in abandoning, and should have had none in being able to substantiate,) but in the essential injustice of the colonial law, which that gentleman and the collector were employed in enforcing. It cannot need an argument to show that while a question is in discussion between her Majesty's government and that of the United States, and is even, as appears by Lord Aberdeen's note to the undersigned, under reference to legal authorities, an enactment of the provincial legislature purporting to decide said question to themselves, and enforcing that decision by capture and condemnation, possesses none of the qualities of the law of civilized States but its forms.

The undersigned sincerely hopes that he has not erred in believing that the recent determination of her Majesty's government, communicated by a separate note of Lord Aberdeen of the 10th instant, may be intended to receive such a construction as will furnish a final and effectual remedy of this grievance.

The undersigned requests the Earl of Aberdeen to accept the assurance of his high consideration.

EDWARD EVERETT.

The Earl of Aberdeen to Mr. Everett.

FOREIGN OFFICE, *April 21, 1845.*

The undersigned, her Majesty's principal Secretary of State for Foreign Affairs, has the honor to acknowledge the receipt of two notes which Mr. Everett, envoy extraordinary and minister plenipotentiary of the United States of America, addressed to him on the 25th ultimo and on the 2d instant, relative to the case of the *Argus*, and that of the *Washington*, United States' fishing vessels.

Those notes have been brought under the consideration of her Majesty's Secretary of State for the colonies, and the undersigned postpones, therefore, replying to their contents, until he shall become acquainted with the results of that reference.

In the meantime, however, the undersigned thinks it expedient to guard himself against the assumption of Mr. Everett, that it may have been his intention by his note of the 10th ultimo, to include other bays on the coasts of the British North American provinces, in the relaxation which he therein notified to Mr. Everett, as to be applied henceforward to the Bay of Fundy. That note was intended to refer to the Bay of Fundy alone.

The undersigned avails himself of this opportunity to renew to Mr. Everett the assurances of his high consideration.

ABERDEEN.

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Mr. Everett to Mr. Buchanan.

(No. 305.) LONDON, *April 23, 1845.*

SIR: With my despatch, No. 278, of 25th March, I transmitted the note of Lord Aberdeen, of the 10th of March, communicating the important information that this government had come to the determination to concede to American fishermen the right of pursuing their occupation within the Bay of Fundy. It was left somewhat uncertain by Lord Aberdeen's note whether this concession was intended to be confined to the Bay of Fundy, or to extend to other portions of the coast of the Anglo-American possessions, to which the principles contended for by the government of the United States, equally apply, and particularly to the waters on the northeastern shores of Cape Breton, where the "*Argus*" was captured. In my notes of the 25th ultimo and 2d instant, on the subject of the "*Washington*" and the "*Argus*", I was careful to point out to Lord Aberdeen that all the reasons for admitting the right of Americans to fish in the Bay of Fundy apply to those waters, and with superior force, inasmuch as they are less landlocked than the Bay of Fundy, and to express the hope that the concession was meant to extend to them, which there was some reason to think, from the mode in which Lord Aberdeen expressed himself, was the case.

I received last evening, the answer of his lordship, informing me that my two notes had been referred to the colonial office, and that a final reply could not be returned till he should be made acquainted with the result of that reference, and that, in the meantime, the concession must be understood to be limited to the Bay of Fundy.

The merits of the question are so clear that I cannot but anticipate that the decision of the colonial office will be in favor of the liberal construction of the convention. In the meantime, I beg leave to suggest, that in any public notice which may be given that the Bay of Fundy is henceforth open to American fishermen, it should be carefully stated that the extension of the same privilege to the other great bays on the coasts of the Anglo-American dependencies, is a matter of negotiation between the two governments.

I am, sir, with great respect, your obedient servant,

EDWARD EVERETT.

JAMES BUCHANAN, Esq.,
Secretary of State.

Mr. Crampton to Mr. Webster.

WASHINGTON, *July 5, 1852.*

SIR: I have been directed by her Majesty's government to bring to the knowledge of the government of the United States a measure which has been adopted by her Majesty's government to prevent a repetition of the complaints which have so frequently been made of the encroachments of vessels belonging to citizens of the United States and of France upon the fishing grounds reserved to Great Britain by the convention of 1818.

Urgent representations having been addressed to her Majesty's government by the governors of the British North American prov-

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inces in regard to these encroachments, whereby the colonial fisheries are most seriously prejudiced, directions have been given by the lords of her Majesty's admiralty for stationing off New Brunswick, Nova Scotia, Prince Edward's Island, and in the Gulf of St. Lawrence, such a force of small sailing vessels and steamers as shall be deemed sufficient to prevent the infraction of the treaty. It is the command of the Queen that the officers employed upon this service should be especially enjoined to avoid all interference with the vessels of friendly powers, except where they are in the act of violating the treaty, and on all occasions to avoid giving ground of complaint by the adoption of harsh or unnecessary proceedings when circumstances compel their arrest or seizure.

I avail myself of this opportunity to renew to you, sir, the assurance of my high consideration.

JOHN F. CRAMPTON.

Honorable DANIEL WEBSTER, *&c., &c., &c.*

Public Letter of Mr. Webster on the American Fisheries.[a]

DEPARTMENT OF STATE,
Washington, July 6, 1852.

Information of an official character has been received at this Department to the following effect:

"The late Ministry of England was opposed to the granting of bounties, on principle; and in consequence, it steadily refused to give the necessary assent to acts of the Colonial Legislatures, granting bounties to the fisheries. The colonies complained severally, of this interference with their local affairs; and they further complained, that the Government declined to enforce the provisions of the Fishery Convention of 1818, and thereby permitted American fishermen to encroach upon the best fishing grounds, from which, under the legal construction of the treaty, they ought to be excluded.

"With the recent change of Ministry in England, has occurred an entire change of policy. The present Secretary of State for the Colonies, Sir John Packington, has addressed a circular letter to the Governors of the several North American Colonies, an extract from which is as follows:

DOWNING STREET, *May 26, 1852.*

Among the many pressing subjects which have engaged the attention of Her Majesty's Ministers, since their assumption of office, few have been more important, in their estimation, than the questions relating to the protection solicited for the fisheries on the coasts of British North America.

Her Majesty's Government have taken into their serious consideration the representations upon this subject, contained in your despatches, noted in the margin, and have not failed to observe, that whilst active measures have been taken by certain colonies for the purpose of encouraging their fisheries, and of repelling the intrusion of foreign vessels, it has been a subject of complaint that impediments should have been offered by the policy of the Imperial Govern-

[a] Published in the Boston Courier, July 19, 1852.

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ment to the enactment of bounties, considered by the local Legislatures essential for the protection of this trade. Her Majesty's Ministers are desirous of removing all grounds of complaint on the part of the colonies, in consequence of the encroachments of the fishing vessels of the United States upon those waters, from which they are excluded by the terms of the Convention of 1818, and they therefore intend to despatch, as soon as possible, a small naval force of steamers or other small vessels, to enforce the observance of that Convention.

This announcement is accompanied by the following, as to bounties:—

With regard to the question of promoting the fisheries of the British Colonies by the means of bounties, Her Majesty's Government, although desirous not to sanction any unnecessary deviation from that policy, which regulates the commerce of this country, are still disinclined to prevent those colonies, by the interposition of imperial authority—and especially pending the negotiation with the United States of America for the settlement of the principles on which the commerce with the British North American Colonies is hereafter to be carried on—from adopting the policy which they may deem most conducive to their own prosperity and welfare.

"The vessels of war mentioned in the above circular despatches, are expected to be upon the coasts of British North America, during the present month (July), when, no doubt, seizures will begin to be made, of American fishing vessels, which in the autumn pursue their business in indents of the coast, from which it is contended, they are excluded by the Convention of 1818.

"Meantime, and within the last ten days, an American fishing vessel called the *Coral*, belonging to Machias, in Maine, has been seized in the Bay of Fundy, near Grand Manan, by the officer commanding Her Majesty's cutter *Netley*, already arrived in that bay, for an alleged infraction of the fishing convention; and the fishing vessel has been carried to the port of St. John, New Brunswick, where proceedings have been taken in the Admiralty Court, with a view to her condemnation and absolute forfeiture.

"Besides the small naval force to be sent out by the Imperial Government, the colonies are bestirring themselves also for the protection of their fisheries. Canada has fitted out an armed vessel to be stationed in the gulf; and this vessel has proceeded to the fishing grounds, having on board not only a naval commander and crew, with power to seize vessels within limits, but also a stipendiary magistrate and civil police, to make prisoners of all who are found transgressing the laws of Canada, in order to their being committed to jail, in that colony, for trial.

"The colony of Newfoundland has fitted out an armed vessel for the purpose of resisting the encroachments of French fishing vessels on the coast of Labrador; but when ready to sail from her port, the governor of that colony, acting under imperial instructions, refused to give the commander of this colonial vessel the necessary authority for making prize of French vessels found trespassing. This is an extraordinary circumstance, especially when taken in connection with the fact that the like authority to seize American fishing vessels, under similar circumstances, has never been refused to the cruisers of any of the North American colonies.

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"The colony of Nova Scotia has now four armed cruisers, well manned, on its coasts, ready to pounce upon any American vessels who may, accidently or otherwise, be found fishing within the limits defined by the crown officers of England.

"New Brunswick has agreed with Canada and Nova Scotia to place a cutter in the Bay of Fundy to look after American fishermen there; and at Prince Edward Island, Her Majesty's steam frigate *Devastation* has been placed under the instructions of the governor of that colony."

The first article of the Convention between the United States and Great Britain of the 20th of October, 1818, is in these words:

Whereas, differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof to take, dry, and cure fish on certain coasts, bays, harbors, and creeks of His Britannic Majesty's dominions in America, it is agreed between the high contracting parties that the inhabitants of the said United States shall have, forever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coast of said Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands; and also on the coasts, bays, harbors, and creeks from Mount Joly, on the southern coast of Labrador, to and through the straits of Belleisle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company; and that the American fishermen shall also have liberty, forever, to dry and cure fish in any of the unsettled bays, harbors, and creeks of the southern part of the coast of Newfoundland, hereabove described, and of the coast of Labrador; but so soon as the same or any portion thereof shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement for such purpose, with the inhabitants, proprietors, or possessors of the ground. And the United States hereby renounce, forever, any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbors, of His Britannic Majesty's dominions in America, not included within the above-mentioned limits. Provided, however, that the American fishermen shall be admitted to enter such bays or harbors, for the purpose of shelter, and repairing damages therein, of purchasing wood and obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them.

It would appear that by a strict and rigid construction of this article, fishing vessels of the United States are precluded from entering into the bays or harbors of the British provinces, except for the purposes of shelter, repairing damages, and obtaining wood and water. A bay, as is usually understood, is an arm or recess of the sea, entering from the ocean between capes or headlands; and the term is applied equally to small and large tracts of water thus situ-

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ated. It is common to speak of Hudson's Bay, or the Bay of Biscay, although they are very large tracts of water.

The British authorities insist that England has a right to draw a line from headland to headland, and to capture all American fishermen who may follow their pursuits inside of that line. It was undoubtedly an oversight in the Convention of 1818, to make so large a concession to England, since the United States had usually considered that those vast inlets or recesses of the ocean ought to be open to American fishermen, as freely as the sea itself, to within three marine miles of the shore.

In 1841, the Legislature of Nova Scotia prepared a case for the consideration of the Advocate General, and Attorney General of England, upon the true construction of this article of the Convention. The opinion delivered by these officers of the crown was,—"That by the terms of the Convention, American citizens were excluded from any right of fishing within three miles from the coast of British America, and that the prescribed distance of three miles, is to be measured from the headlands or extreme points of land next the sea, of the coast or of the entrance of bays or indents of the coast, and consequently that no right exists on the part of the American citizens, to enter the bays of Nova Scotia, there to take fish, although the fishing, being within the bay, may be at a greater distance than three miles from the shore of the bay; as we are of opinion that the term 'headland' is used by the treaty to express the part of the land we have before mentioned; including the interior of the bays, and indents of the coast."

It is this construction of the intent and meaning of the Convention of 1818, for which the colonies have contended since 1841, and which they have desired should be enforced. This, the English Government has now, it would appear, consented to do, and the immediate effect will be, the loss of the valuable fall fishing to American fishermen; a complete interruption of the extensive fishing business of New England, attended by constant collisions of the most unpleasant and exciting character, which may end in the destruction of human life, in the involvement of the Government in questions of a very serious nature, threatening the peace of the two countries. Not agreeing that the construction thus put upon the treaty is conformable to the intentions of the contracting parties, this information is, however, made public to the end that those concerned in the American fisheries may perceive how the case at present stands, and be upon their guard. The whole subject will engage the immediate attention of the Government.

DANIEL WEBSTER,
Secretary of State.

Mr. Webster to President Fillmore.

FRANKLIN, *July 17, 1852.*

MY DEAR SIR,—The interruption of the usual occupation of our fishermen in the British Provinces, is a very serious business. I fear much difficulty may arise from it.

Following your suggestion to Mr. Hunter, I have prepared a paper which will appear in the newspapers in this part of the country immediately, and have directed its publication in Washington. I hope

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you will approve of it. If I felt well enough, and strong enough, I would proceed immediately to Washington, but I do not. I wrote today a letter to Mr. Crampton, a copy of which I now enclose to you. We shall be obliged, I am persuaded, to look up this business of the fisheries as well as the whole subject of the Canadian trade as matter of negotiation. Congress will never do anything. I will thank you, at your earliest convenience, to signify to me your wishes and your opinions.

I leave these mountains and valleys with great reluctance, but it seems to be necessary.

Yours, always truly,

DAN'L WEBSTER.

Mr. Webster to Mr. Crampton.

FRANKLIN, *July 17, 1852.*

MY DEAR MR. CRAMPTON,—The threatened interruption, by force, of that enjoyment of the fisheries, which the fishing vessels of the United States have so long practised and possessed without interruption or molestation, is a serious affair, and I fear full of danger. I wish to see you as soon as you can possibly come North.

If I am not in Boston at the Revere House, please proceed immediately to Marshfield, bringing with you as many of your adjuncts as you please.

I have recommended to the President, that we take up the whole subject of the fisheries and the Canada trade at once, as matters of negotiation.

You will see in the Boston papers of Monday, an official publication by me. Is it not possible for you to prevail with the provincial authorities to institute no hostile proceedings against American fishing vessels till longer notice be given, and until you and I may have conferred together on the subject?

I am anxious to see you at once. On receipt of this, inform me, by telegraph, when you can be in Boston.

I am, with great regard, yours always truly,

DAN'L WEBSTER.

Mr. Webster to the "Boston Courier."[a]

BOSTON, *July 20th, 1852.*

To the EDITOR OF THE BOSTON COURIER:

SIR:—Since my return to the city this morning, I have received a copy of the despatch from Mr. Everett, then United States Minister in London, to Mr. Buchanan, Secretary of State, which adds a very important feature to the subject of the fisheries and which I send to you for immediate publication.

Yours very respectfully,

DANIEL WEBSTER.

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[a] Encloses a letter from Edward Everett to the Secretary of State, (No. 305, dated April 23, 1845) which was published with the foregoing letter from Mr. Webster in the "Courier" of July 21, 1852. For Mr. Everett's letter see p. 506.

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Mr. Webster to President Fillmore.

BOSTON, *July 21, 1852.*

MY DEAR SIR,—I came to this city today to meet Mr. Crampton, but he is not likely to be here until Friday morning. It will be found, I think, that Sir John Packington has waded out of his depth. In 1845, Lord Derby was Colonial Secretary, and must himself have concurred in Lord Aberdeen's correspondence with Mr. Everett. There is rather an interesting article in the Boston Post of today, which I enclose to you. I think I understand the subject tolerably well. A very elaborate correspondence took place in England between Mr. Quincy Adams and Lord Bathurst, in 1815 or 1816. I have it at Marshfield. It is my purpose to address a note on this subject to Mr. Crampton, (of course to be submitted to you,) so soon as I shall receive certain papers which I have requested Mr. Hunter, by telegraph to send me immediately.

The weather is exceedingly warm.

My health is a good deal improved, and I think I need nothing but rest. I pray you, my dear Sir, to command my attendance in Washington whenever necessary.

I wish I could see a day fixed for the adjournment of Congress.

Yours, always truly,

DAN'L WEBSTER.

Mr. Webster to President Fillmore.

BOSTON, *July 24, 1852.*

MY DEAR SIR,—Mr. Crampton is here, and is disposed to do anything to keep peace. I will write you on Monday, from Marshfield. My present purpose is to proceed to Washington, just as soon as I shall have health and strength enough to encounter the journey.

Yours truly,

DAN'L WEBSTER.

Extract from Speech of Daniel Webster at Marshfield, Mass., July 25, 1852 (published in "The Writings and Speeches of Daniel Webster," 1907).

Mr. Sprague has made allusion to recent occurrences, threatening disturbances on account of the fisheries. It would not become me to say much on that until I speak officially, and under direction of the head of the Government. And then I shall speak. In the meantime, be assured that that interest will not be neglected by this Administration under any circumstances.

The fishermen shall be protected in all their rights of property, and in all their rights of occupation. To use a Marblehead phrase, they shall be protected hook and line, and bob and sinker. And why should they not? They employ a vast number. Many of our own people are engaged in that vocation. There are among you some who perhaps have been on the Grand Banks for forty successive years, and there they have hung on to the ropes in storm and wreck.

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The most potent consequences are involved in this matter. Our fisheries have been the very nurseries of our navy. If our flag-ships have met and conquered the enemy on the sea, the fisheries are at the bottom of it. The fisheries were the seeds from which these glorious triumphs were born and sprung.

Now, gentlemen, I may venture to say one or two things more on this highly-important subject. In the first place, this sudden interruption of the pursuits of our citizens, which had been carried on more than thirty years without interruption or molestation, can hardly be justified by any principle or consideration whatever. It is now more than thirty years that they have pursued the fisheries in the same waters, and on the same coast, in which, and along which, notice has now come that they shall be no longer allowed these privileges. Now, this cannot be justified without notice. A mere indulgence of so long continuance, even if the privilege were but an indulgence, cannot be withdrawn at this season of the year, when our people, according to the custom, have engaged in the business, without just and seasonable notice.

I cannot but think the late despatches from the Colonial Office had not attracted to a sufficient degree the attention of the principal minister of the Crown, for I see matter in them quite inconsistent with the arrangement made in 1845 by the Earl of Aberdeen and Edward Everett. Then the Earl of Derby, the present First Minister, was Colonial Secretary. It could not well have taken place without his knowledge, and, in fact, without his concurrence and sanction. I cannot but think, therefore, that its being overlooked is an inadvertence. The Treaty of 1818 was made with the Crown of England. If a fishing-vessel is captured by one of her vessels-of-war, and brought in for adjudication, the Crown of England is answerable, and then we know whom we have to deal with. But it is not to be expected that the United States will submit their rights to be adjudicated upon in the petty tribunals of the provinces, or that they will allow our vessels to be seized by constables or other petty officers, and condemned by the municipal courts of Canada and Newfoundland, New Brunswick, or Nova Scotia! No, no, no! Farther than this, gentlemen, I do not think it expedient to remark upon this topic at present; but, you may be assured, it is a subject upon which no one sleeps at Washington. I regret that the state of my health causes my absence from Washington when the news came of this sudden change in the interpretation of the treaties. My health requires relaxation. I shall feel it my duty, as soon as my health and strength will justify me in undertaking the journey, to return to my post, and discharge the duties devolving upon me to the best of my abilities.

Consul Norton to Mr. Webster.

UNITED STATES CONSULATE,
Pictou, Nova Scotia, July 29th, 1852.

SIR: At this moment, there is much excitement in this quarter, on the subject of the *Fisheries;* and a large British Naval Force is now on the coast of Newfoundland and in the Gulf of St. Lawrence, de-

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termined to capture every American vessel found guilty of an infraction of the Treaty of 1818 as now proclaimed to be understood by the present British Ministry.

A small schooner, called the "*Union*" of Brookline, State of Maine, was taken into Charlottetown Harbor Prince Edward Island, on Friday Evening 23d instant, having been captured by Lieut. ——— commanding Her Majesty's Cutter *Telegraph*.

Being on a visit to that portion of my Consulate, I sought an interview with the Captain of the Fisherman, and from his affidavit which I caused to be taken, it appears, that according to his calculation, he was about *six miles* from the extreme point of East Point, Prince Edward Island. The Commander of the Cutter, however, gives a different version, computing the distance at about *two* and *three-quarter miles*.

I have instructed my Consular Agent at Charlottetown to use his utmost endeavors to free the vessel if he is satisfied that it was not the intention of the Master of the *Union* to violate the Treaty of 1818.

I had the honor of forwarding to your address yesterday, a Telegraphic Despatch requesting that an American Armed Steamer might be forwarded to this Coast as early as possible. My object in making this request is, that I believe that the Fishermen, many of whom are entirely ignorant of the construction of the Treaty of 1818, as now promulgated by the present British Ministry, would willingly listen and conform to advice given by those representing the American Government, while they will resist with force any attempts made to capture them, many of them being completely armed for this purpose.

There are some thousands of American Fishermen now in the Gulf and on the Coast of Newfoundland, who will be compelled to leave the waters peaceably or risk the possibility of being made prisoners. In case the latter should be the result, and application is made to this Consulate for pecuniary aid to enable them to reach their homes, is it the duty of the Consul to provide such means in behalf of the Government.

I enclose you the official correspondence between His Ex. Sir Alexander Bannerman, Lt. Gov. of Prince Edward Island and the Head of the Colonial Office at London; in that correspondence allusion is made to correspondence which took place between the Lieut. Governor and myself, a copy of which was forwarded to the Department at the time. I am pleased to find that the views entertained by me, relative to the Treaty of 1818 are sustained by my Government.

I am pleased to state that the principle of Reciprocity in Trade between the United States and the British North American Provinces has no opponents in this quarter, and that the Acting Lieut. Gov. of Prince Edward Island are its open advocates.

I have the honor to be,

Very respectfully, your most obt. svt.,

B. HAMMATT NORTON,

United States Consul for Pictou and Dependencies.

To Hon. DANIEL WEBSTER,

Secretary of State, Washington City.

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Consul Braine to Mr. Webster.

No. 96.] CONSULATE OF THE U. STATES OF AMERICA,
Halifax, N. S., August 9th, 1852.

SIR: Mr. Livingston, under date of 2d inst. desires me to inform you of my having sent on to the United States (Boston) a number of desᵉ. American Seamen, not deeming this of sufficient importance to trouble you with, I did not advise you at the time.

The Ship "*Reciprocity*" was destroyed by fire in lat. 45.30, Lon. 45.50, Captain Valpey and crew (30 in number) were rescued from the Boats by the French Schooner "*Aigle*" of Roen, from Cadis for St. Pierre Miquelon, from whence a part were forwarded to this Consulate, as you will observe by reference to the annexed copies of letters received here with the men, they arrived here on the 27th July, and having lost everything in the ship, I provided for them that day, and the same evening put them on board the Steam packet *Sir John Harvey* for Boston.

The usual charge by the sailing packets was $8. but the agents since having a steamer on the line charge $9. for such passengers, and as it was most for the Government interest I allowed it, sooner than keep the men here for other opportunities. The order referred to by Mr. Archibold was on you for $52.00 being passage money from Sydney to this Port. It was certified to and endorsed by me. * * *

Vice Admiral Sir G. Seymour in the Flagship *Cumberland* (70) returned to this Port on the 5th inst. from St. Johns NFd. Land, where he had been on a visit connected with the Fisheries. The Admiral was accompanied on his return by Sir I. Gaspard LeMarchant, late Governor of that Colony and now appointed as the Lieutenant Governor of this Province. His Excellency was sworn in the same day immediately on landing.

During the month of July the fleet on this Station have been reinforced by Steamships "*Buzzard*" & "*Basilisk*" of six guns each. The Admiral has also hired the Brig "*Arrow*" and Schr. "*Telegraph*" at this Port. These vessels are specially employed for the protection of the Fisheries and with others are stationed thus. Brig "*Sappho*" 12, Brig "*Arrow*" and the Steam Ships "*Bussard*" 6, and "*Basiliks*" 6 on the Labrador, and Newfoundland Coast. The latter Str. is yet in this harbour, but will be off soon.

Steamship "*Devastation*" 6, and the Schr. "*Telegraph*" in the Gulf of St. Lawrence. The Schooner *Bermuda*, and Cutter *Netley* in the Bay of Fundy.

Besides these the Colonial Government, of this Province, have three vessels as I informed you on the 13th May they had advertised for, they are, the Brig "*Halifax*" at Pictou and the Eastern Coast, Schooner "*Responsible*", Gut of Canso and Cape Breton, and Brig. *Belle*, at Cape Sable, and the coasts in its vicinity, the seizing officer of this latter vessel, has taken the Schooner "*Helen Maria*" of Gloucester. Mr. Grantham, the Consular agent at Yarmouth has forwarded me the Protest of the Master and crew of this vessel. They were received Saturday (7) and lain immediately before his Excelleney the Lieut. Governor, but the vessel had then been released as you will notice on reference to copies of letters relating to her, also annexed.

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The only other vessels known here to have been seized up to this date, are the Schooners "*Coral*" and "*Hyadas*", by the "*Netley*" at St. John, N. B. and the "*Union*" at Charlottetown, P. E. I. by the "*Telegraph*".

I have the honor to be, sir,

THOS M. BRAINE,
Acting Consul, U. S. A.

[Inclosure.]

PROVINCIAL SECRETARY'S OFFICE,
Halifax, August 7, 1852.

SIR: Referring to your letter of this day's date, I beg to enclose a copy of a letter which by command of the Lieutenant Governor, I yesterday addressed to the Collector at Pulnico, directing him to deliver up the Schooner *Helen Maria* to her owner.

I am, sir, your most obt. servant,

(Signed) JOSEPH HOWE.

THOMAS M. BRAINE, Esq.,
Acting Consul,

[Sub-inclosure.]

PROVINCIAL SECY. OFFICE, *August 6, 1852.*

SIR: There being reason to hope that friendly negotiation may, before long, adjust the fishery question, His Excellency the Lieutenant Governor is unwilling to press upon Captn. Spinney in the meantime a severe construction of the law. I have therefore been commanded by his Excellency to authorize you to release the "*Helen Maria.*"

I have, &c.,

(Signed.) JOSEPH HOWE.

THOMAS MILLET, Esqr., &c., &c., &c.
Pulnico.

Mr. Lawrence to Mr. Webster.

No. (197) LEGATION OF THE UNITED STATES,
London, August 10, 1852.

SIR: At the request of the Earl of Malmesbury, I had an interview with him at the Foreign Office on Saturday, the 7th instant, upon the subject of the fisheries. He began the conversation by asking if I had received any instructions or other communication from the government of the United States in regard to them; to which I replied that I had not; that there had been scarcely time to communicate with me, and that I had no information beyond that found in the public journals.

He then remarked that this question was not understood in the United States; that Mr. Webster had sent for Mr. Crampton to come to Boston; that the British government did not intend to assert any new principle, but only to protect the rights of the colonists in the fisheries, which had been neglected by their predecessors; that what had been done, had been done at the urgent request of the colonists themselves; that the concessions made by Lord Aberdeen, of the right

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to fish in the Bay of Fundy, were fully recognized by the present government, and would not be withdrawn; that an armed force was sent there at this time to keep the American fishermen three miles from the British shores, in accordance with the provisions of the convention of 1818; that the orders were the same, both with respect to the French and the American fishermen; and finally, that her Majesty's government did not intend, by sending an armed force into those waters, to give offence either to the government or to the people of the United States; the sole object being to maintain the neglected rights of the colonists.

He then requested me to assure you of the friendly feeling entertained by the present government towards the United States, and their strong desire to continue the cordial relations now so happily existing.

I asked, then, whether, when the instructions of the 24th of May were sent to the colonial governors, her Majesty's government were aware of the existence of Lord Aberdeen's note to Mr. Everett, yielding the liberty to American fishermen to fish in the Bay of Fundy. He said they were. I then asked whether notice of the intentions of her Majesty's Government had been given to the government of the United States. He said notice was sent to Mr. Crampton, on or about the 16th of June, to be communicated to you officially.

After Lord Malmesbury had finished, I stated that, having received no communication from the government of the United States, I could of course only express my own opinion upon the question; that the right of her Majesty's government to keep the American fishermen at a distance of three marine miles from the shore, seemed to me clear under the treaty; that we should probably differ in the application of that instrument to the bays and harbors on the coast, as I could not agree to the British interpretation—but we would not discuss that point now; and that I would proceed to express my own views frankly on the present condition of the question. I said that I deeply regretted the course taken by her Majesty's government; that the sending of nineteen armed vessels, without notice, to those waters, (as stated in the provincial journals,) appeared to be a hostile movement, and one that could not but produce unpleasant results; that courtesy demanded that after the right of fishing had been claimed and exercised for thirty years, (whether rightfully or wrongfully,) such notice should be given to the government of the United States as would enable it to seasonably proclaim to all concerned the intentions of the British government. I further stated that this measure taken at this time, when the whole American fishing-fleet was upon the provincial coast, would appear to have been intended (whether really so or not) to coerce the United States into a system of trade which, it is well known, the provinces have long sought for. I further stated that I was personally in favor of a comprehensive and reciprocal system of trade between the United States and the British North American provinces; but that a measure of so much importance, involving so various interests, could not be matured and executed without allowing time. I said that this whole question was at present receiving much attention, not only in the provinces, but in all the States of the Union; that a committee of the House of Representatives had it under consideration, and that I

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had understood that they were about to report a bill, or at least to make a report. If wisely arranged, I said that I thought the measure would prove conducive to the interests of both countries; and I could not but regret still more that the apparently hostile attitude of her Majesty's ministers would retard its adoption. I said that under all the circumstances I could not but think that this apparent measure of coercion was hastily adopted, and without that deliberation and forethought which had usually characterized the proceedings of British statesmen, and which was becoming a nation acting towards those with whom they were in a state of amicable peace, if not friendship even. I felt, therefore, I added, that under all the circumstances a mistake had been committed in ordering a fleet to those waters, and that I hoped the instructions to the several authorities in the provinces and to the admiral, would be so far modified as to open the way to a final and equitable settlement of the question.

With this the interview of the 7th terminated.

On the 9th I again met Lord Malmesbury at the Foreign Office, at his request. He said that since our last interview he had seen Lord Derby, who said that the idea had never occurred to him to give a formal notice to the United States, as her Majesty's government did not intend to assert any new principle, but only to maintain those provisions of the treaty of 1818 about which there was no dispute, viz: those in regard to fishing within three miles of the British shore. I asked Lord Malmesbury whether despatches were to be sent to Mr. Crampton and to the authorities of the lower provinces; to which he replied that they were now being prepared, and would be sent from here on Friday. I asked what would be their character. He said those in authority would be instructed to confine the efforts of the vessels of war to within three miles of the shore, leaving the other questions open to be considered hereafter, and to use great care and sound discretion in the exercise of the authority intrusted to them even within the three miles.

This terminated the interview of yesterday. The government, I am satisfied, feel that they committed an error in ordering a large naval force to those waters during the fishing season, and a still greater one in sending it without reasonable notice to the government of the United States, and are now willing to do everything in their power to allay excitement. If a comprehensive plan of reciprocal trade between the British North American colonies and the United States can be adopted, it will supersede the necessity of taking up the fisheries separately. If that cannot be done, I still believe that an arrangement favorable to both countries can be made, which will settle forever the question of the North American fisheries.

I have the honor to be, sir, very respectfully, your obedient servant,

ABBOTT LAWRENCE.

Lord Malmesbury to Mr. Crampton.

No. 78) FOREIGN OFFICE, *August 10, 1852.*

SIR: I have received and laid before the Queen your despatch, No. 105, of the 20th ultimo, respecting the official publication, by the Secretary of State of the United States, of certain information relative to the measures adopted by her Majesty's government for the

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protection of British fisheries on the coasts, the mainland, and islands forming part of her Majesty's North American possessions.

Her Majesty's government must necessarily entertain the sincerest regret that such a publication should have been made without what appears to Her Majesty's government sufficient inquiry into the circumstances of the case; for the terms of friendly alliance which so happily subsist between the two nations would, on the one hand, not have warranted her Majesty's government in adopting any measures which might be held to be offensive to the United States, and, on the other hand, could not have justified the government of the United States in supposing that any such measures were intended. Her Majesty's government, therefore, while it gives expression to the above mentioned regret, will assume at once that neither government entertains towards the other any intention of acting discourteously or provoking collisions or unfriendly feelings between the subjects and citizens of the two countries; and I will now proceed to explain to you how greatly this question of the protection of British fisheries has been misunderstood and misinterpreted in the United States.

In the first place, it has been assumed by Mr. Webster, that "with the recent change of ministry in England has occurred an entire change of policy;" and here I must take occasion to state that the question of protecting British subjects in the exercise of their undoubted rights under treaties, is one which, in this country, is not materially affected by changes of ministry; and the real question, therefore, is, what are those rights, and how they are understood respectively by Great Britain and the United States?

The rights are laid down in the treaty of 1818, as quoted by Mr. Webster; that is, undoubted and unlimited privileges of fishing in certain places were thereby given by Great Britain to the inhabitants of the United States; and the government of the United States, on their part, renounced forever any liberty previously enjoyed or claimed by its citizens to fish within three marine miles of any other of the coasts, bays, creeks, or harbors of the British dominions.

A point in dispute in regard to this matter subsequently arose as to the interpretation to be given to the term "bay," namely, whether an American vessel could fish within a bay so long as she was beyond three miles from the shore, or whether the words of the Treaty, "within three miles of any of the bays," meant within three miles of a line drawn from headland to headland; and in the year 1845, a correspondence ensued between the British and the United States governments, which led to the despatch of a letter from Mr. Everett, the United States minister in this country, to his government, dated London, April 26, 1845. This letter has been published by Mr. Webster, and is, unfortunately, calculated to cause an incorrect view to be taken of the subject by the American public; for Mr. Everett therein stated that Lord Aberdeen's note of the 10th of March, 1845, conceded to American fishermen the right of fishing within the Bay of Fundy, but left doubtful the question of other bays, and that he had accordingly claimed the same right as regards other bays; and it is to be inferred from Mr. Everett's expressions, that Lord Aberdeen had replied that he would submit that question to the Colonial Office, and that meanwhile the concession was to be limited to the Bay of Fundy.

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Now, if Lord Aberdeen's notes, to which Mr. Everett alluded, had been carefully examined by Mr. Webster, and had also been published, Mr. Webster, and the public of two countries, would have seen that, instead of conceding a right, Lord Aberdeen expressly reserved it; but that in order to prove the friendly feeling of Great Britain towards the United States, her Majesty's government, by Lord Aberdeen's note, "*relaxed*," as regarded the Bay of Fundy, and the right which her Majesty's government felt bound to maintain, of excluding American fishermen from that bay; and, moreover, it would have appeared that Lord Aberdeen, in the letter referred to, merely stated that he would submit to the Colonial Office the question relating to the seizure of two particular vessels, the "*Washington*" and "*Argus*," and that, as regarded the bays, his words were to be taken as applying to the Bay of Fundy alone. It appears, however, partly by Mr. Webster's communications with you and by terms of his official publications, and partly by the proceedings in the Senate of the United States, that it is supposed in the United States, first, that her Majesty's present government have resolved to overrule the decision of the government of 1845, and to withdraw the privilege then granted to American fishermen to fish in the Bay of Fundy; and, secondly, that, notwithstanding the express terms of the treaty, American fishermen are privileged, either by usage or right, to fish upon any part of the British coast within three marine miles of the shore.

Both suppositions are entirely founded in error. Her Majesty's government, so far from having any intention of now excluding American fishermen from the Bay of Fundy, are prepared to maintain that the relaxation granted in 1845 was reasonable and just, and should be adhered to; and, in giving orders to strengthen the naval force employed to maintain the exercise of our rights under the treaty of 1818, they could not contemplate that the government of the United States would assume that a relaxation formally granted, as regards the Bay of Fundy, was thereby cancelled, without the equally formal notice which her Majesty's government would undoubtedly feel themselves bound to have given to an ally of the British Crown, had such an act been intended.

But, in regard to the three-mile distance, her Majesty's government are not aware that it has at any time been maintained by the government of the United States that there can be, or that there has ever been supposed to be, the slightest doubt that her Majesty's government are not only entitled, but bound, to maintain that distance free from encroachment.

Whatever construction either government may put upon the term "bay," as used in the treaty, there can be no possible question as to the three-mile limit from any British shore; and when, therefore, Mr. Webster alluded, in his official publication, to the seizure of the American fishing vessel "*Coral*," in the Bay of Fundy, near Grand Manan, he must have overlooked the fact that Grand Manan was British territory, and that the "*Coral*" was taken almost within musket-shot of the shore.

It is for the prevention of such infractions of treaty, and not with any view to disturb arrangements made in good faith with the United States government, that her Majesty's government issued orders to their officers to put a stop to illicit proceedings—proceedings which

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are not merely contrary to treaty, but which are mixed up with smuggling transactions damaging to British interests.

Little, therefore, as her Majesty's government could have contemplated the impression which this matter appears to have produced in the United States, still less could they have imagined that the orders given by them to Vice Admiral Sir George Seymour to attend personally to this matter should have been construed into an offensive proceeding, and one calling for the strictures which, without any defence on the part of the United States government, it occasioned in the Senate; for, although it is true that the flag of the commander-in-chief is hoisted on board a ship-of-the-line, and that, in the execution of his inspections, her Majesty's ship "*Cumberland*" was ordered, with other vessels, to the fishery station, this measure was not adopted with a view to show an imposing force, but in order that her Majesty's government might have the advantage, in a matter requiring judgment and discretion, of the presence of an officer so highly distinguished for both qualities, and whose recent judicious conduct in an affair at Greytown called forth the praise of the officers and of the government of the United States.

As I propose that this despatch shall merely explain away certain points which have clearly been misunderstood, I shall abstain for the present from entering into a discussion upon the interpretation to be given to the term "bay"; and upon this part of the subject I will only add that her Majesty's government intended to leave the matter precisely where it was left in 1845 by the governments of Great Britain and the United States—namely, that the relaxation as to bays applied, as is stated in Lord Aberdeen's note to Mr. Everett of the 21st of April, 1845, "to the Bay of Fundy alone"—any further discussion of that question being as a matter of negotiation between the two governments.

I cannot, however, conclude without adverting to the fact that the proceedings of her Majesty's government which have called forth so much animadversion on the part of the United States were adopted not merely with reference to the protection of British fisheries against American encroachments, but also against similar encroachments on the part of French fishermen; and that a considerable proportion of the armed craft employed for protecting the British fisheries in North America were placed there in order to use means equally used by the French government to protect French rights.

Now, with regard to such species of protection, the governments of Great Britain and France have not been in the habit of evincing any national jealousy, or of considering that offence was thereby intended. On the contrary, both governments have found that the surest mode of preventing misunderstandings was to join in effectually protecting their respective lines of demarcation.

Such protection, or rather guard, is constantly maintained by both governments in the British channel, where the fishery is regulated by a convention between Great Britain and France, whereby the lines are clearly laid down, and where, notwithstanding the mutual precaution adopted by the cruisers of both nations, the fishermen of both countries are repeatedly found encroaching. But such encroachments are not countenanced by either government. The cruisers of each government are instructed to warn their own countrymen whenever

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they observe them disposed to cross the line of demarcation, and the fishermen who trespass, pay the penalty of their improper proceedings.

In like manner, trespasses have been committed by French and British fishermen, respectively, on the coast of Newfoundland; and, in order to avoid disputes, the two governments resolved to endeavor, by negotiation, to establish rules for the mutual regulation of the fisheries; but pending the conclusion of such negotiations, her Majesty's government and the government of France have placed a force off the coast of Newfoundland to watch the proceedings, respectively, of the fishermen of the two countries.

You will read this despatch to Mr. Webster, and, in leaving a copy of it with him, you will not fail to assure him, and to request him to assure the President of the United States, that her Majesty's government continue to feel the same anxiety that has long been felt in this country for the maintenance of the best relations between the two governments, and it will be to them a source of sincere satisfaction if the attention which has thus been drawn to the subject of the fisheries should lead to an adjustment, by amicable negotiations, upon a more satisfactory footing than at present, of the system of commercial intercourse between the United States and her Majesty's North American colonial possessions.

I am, &c.,

MALMESBURY.

Lord Malmesbury to Mr. Lawrence.

FOREIGN OFFICE, *August 13, 1852.*

MY DEAR SIR: The orders that are to go out to our admiral, and of which I have given Mr. Crampton notice, are—

Not to interfere with the Magdalen islands.

To consider the Bay of Fundy on the same footing as we placed it in 1845.

To capture American fishing vessels only under precisely [the] same circumstances as those which would have been acted upon of late years, and when manifestly infringing the treaty.

To exercise these instructions with the greatest forbearance and moderation.

Yours, truly,

MALMESBURY.

Mr. Lawrence to Mr. Webster.

No. 200.] LEGATION OF THE UNITED STATES,
London, August 13, 1852.

SIR: On the 11th instant I again had an interview with Lord Malmesbury, at his request, at the Foreign Office, at which Sir John Packington was present. The conversation was substantially a repetition of what had taken place previously between Lord Malmesbury and myself. Nothing new was said to alter the views I have already expressed to you.

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Mr. Crampton will receive by this mail instructions, which he will doubtless read to you. They will contain, I think, the same sentiments expressed to me by Lord Malmesbury. Copies, also, of the instructions sent to the colonial governors and to Admiral Seymour will probably accompany the instructions.

Lord Malmesbury will probably propose to leave that part of the treaty about which we disagree, for the present, just where it has been, and will direct the British authorities to confine their exertions to within three marine miles of the shore, to exercise their power with great leniency, and not to make captures except under flagrant circumstances. He wishes to place the question in position to be adjusted, if possible, when the present excitement has passed away. Whatever may be the views of the colonists, the government here has every desire to settle the whole matter. They have committed an error which I think they wish to repair as soon as possible.

The fishing cannot be abandoned at this time of the year without great loss and suffering. It has occurred to me that if, on investigation, it turns out that our fishermen have been in the habit of "finishing their fares" in waters clearly within three miles of the shores, perhaps Mr. Crampton would consent, if his instructions permit him, to advise the authorities not to make captures this year. I still think this question can be now finally and satisfactorily settled.

I have the honor to be, sir, very respectfully, your obedient servant,

ABBOTT LAWRENCE.

Consul Braine to Mr. Webster.

No. 97.] CONSULATE OF THE UNITED STATES OF AMERICA,
Halifax, N. S., September 4, 1852.

SIR: Since I had the honor of addressing you on the 9th ultimo I have had the gratification of a visit from Commodore Matthew C. Perry, in the Steam Frigate "*Mississippi*" Captain William I. McCluney. the appearance of this fine frigate, in the Port, created quite a sensation amongst the inhabitants of this city.

Commodore Perry was received with the usual courtesies due to his rank by the Admiral Sir G. F. Seymour, and the Lieut. Governor Sir. I. G. Le Marchant, and the Military and Civil Authorities of the City, &c. From the former particularly he had every facility afforded him, towards the completion of his mission in these waters.

In the absence of Mr. Livingston I furnished Commodore Perry with copies of all my correspondence, relating to the seizure, and release of the Fishing Schooner "*Helen Maria*" of Gloucester, and such other information as I could give him, and also assisted at the request of the Commodore in procuring a supply of fuel and a competent pilot to take the frigate from hence, and to continue her cruise on the Eastern Fishing grounds, around Prince Edwards Island &c., and for which services I was informed the general instructions did not allow the Consul any remuneration for.

The Steam Packet "*America*" from England, arrived here on the 31st ulto. bringing a rumor of reported concessions by Great Britain of the Fishery Convention of 1818, so as to give our vessels the right to fish within the Bays of Br. America, which caused at first very

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great surprise and much excitement among all classes in this city.—The next day however the excitement was somewhat allayed, when it was ascertained that neither the Admiral nor Provincial Government had received any official information on the subject, and that the rumour was wholly discredited in those quarters. Nevertheless the Members of the Legislature for this township and County with some of the leading merchants &c. of the city put in a requisition to the Mayor, to call a Public Meeting of the citizens, which was acceded to, and took place next morning, Thursday the 2nd instant at ten o'clock, when a numerous and highly respectable assemblage passed a Memorial to the Queen, with a set of resolutions and an Address to the Lieut. Governor (unanimously) on the subject for copies of these documents—I crave reference to the enclosed taken from one of the City papers, and which is said to be correct.

I have the honor to be, sir,
Your most obt. servt.,

THOS. M. BRAINE,
Acting Consul, U. S. A.

The Honorable DANIEL WEBSTER,
Secretary of State, &c., &c., &c., Washington.

Memorandum prepared by Mr. Webster for letter to Mr. Crampton.[a]

It is quite evident that from the very commencement of Negotiations for a Treaty of Peace in 1782, the United States always insisted upon a participation in the Eastern fisheries, not as a concession, or as a matter of liberty; but as a matter of right. This was most distinctly stated by the American Commissioners to those of England, at Paris on the 29th of November, 1782. Mr. John Adams, one of those Commissioners, declared that Mr. Strachey and Mr. Fitzherbert on the part of England, urged the American Commissioners to leave out the word *right* and substitute the word *liberty*, saying that the former was an obnoxious expression. Thereupon Mr. Adams, rising up, said, that though they were to agree to all the other Articles, and left that of the Fisheries to be adjusted at the Definitive Treaty, he would never put his hand to any Article without satisfaction about the Fisheries; that he had been honored three or four years before by Congress with a Commission to make a Treaty of

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[a] This Memorandum is published in "The Writings and Speeches of Daniel Webster," Boston, 1903, Vol. XIV., pp. 625–638 with the following Introduction:

"It was Mr. Webster's purpose in concluding this paper to discuss the nature and character of those international relations which are not abrogated by war.

In the last clause of his paper it will be seen that he admits that the liberty to cure & dry fish on the shores of the British Provinces was a concession, not exempted from abrogation, by a subsequent war. He was then about to treat of the other branch of the subject & to show that the right to take fish according to previous usage, along the shores & in the waters of the British Provinces was one of those rights not abrogated by a subsequent war. On this point he one day told the Editor he was quite prepared, and he was indeed anxious to state his views in full in an official communication.

Other engagements, various interruptions, &, at last, his illness, prevented his treating of this latter and more important topic.

Ed. FLETCHER WEBSTER."

The original memorandum is in the possession of the New Hampshire Historical Society. The print made in this Appendix is from a certified copy furnished the Department of State of the United States by that Society.

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Commerce with Great Britain, and it had given positive instruction not to make any such Treaty without an Article acknowledging our right to the Fisheries; and he added that there neither was, nor could be a clearer right; that in former Treaties, as for instance those of Utrecht and Paris, England and France had claimed the right and used the right.

"When God Almighty made the Banks of Newfoundland at three hundred leagues distant from the People of America, and six hundred leagues from those of England and France, did he not give as good a right to the former as to the latter?

"If Heaven in the Creation gave a right, it belongs to America as much as to England. If occupation, use and possession give a right, America is as much entitled to it as England. If war and blood and treasure give a right, the claim of those who have been English Colonies is as clear as that of Great Britain. For America has been constantly fighting in Canada, Cape Breton and Nova Scotia for the defense of these fisheries, and has expended beyond all proportion more than England herself.

"If then the right cannot be denied, why should it not be acknowledged and put out of dispute?"

Mr. Laurens said, at the same time, with great firmness, that he agreed with Mr. Adams and could never give his voice for any Articles without an acknowledgment of the American right to the Fisheries; and Mr. Jay added that it could not be a peace, it would only be an insiduous truce without it. To all this, Mr. Fitzherbert, one of the English Commissioners, replied, that the reasons appeared to be good, and the argument was in their favor.

The instructions to which Mr. Adams referred are the following:

"I. That the common right of fishing shall in no case be given up. II. That it is essential to the welfare of these United States that the inhabitants thereof at the expiration of the war, should continue to enjoy the free and undisturbed exercise of their common right to fish on the Banks of Newfoundland, and the other fishing banks and seas of North America, preserving inviolate the Treaties between France and the said states; III. That application shall be made to His Most Christian Majesty to agree to some article or articles for the better securing to these states a share in the said fisheries; IV. That if, after a treaty of peace with Great Britain, she shall molest the citizens or inhabitants of any of the United States, in taking fish on the banks and places hereinafter described, such molestation, being in our opinion a direct violation and breach of the peace, shall be a common cause of the said States, and the force of the Union be exerted to obtain redress for the parties injured; V. That our faith be pledged to the several states, that, without their unanimous consent, no treaty of commerce shall be entered into, nor any trade or commerce carried on with Great Britain, without the explicit stipulation hereinafter mentioned. You are therefore not to consent to any treaty of commerce with Great Britain without an explicit stipulation on her part, not to molest or disturb the inhabitants of the United States of America in taking on the Banks of Newfoundland and other fisheries in the American Sea anywhere, excepting within the distance of three leagues of the shores of the

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territories remaining to Great Britain at the close of the war; if a nearer distance cannot be obtained by negotiation. And in the negotiation you are to exert your most strenuous endeavors to obtain a nearer distance to the Gulf of St. Lawrence, and particularly along the shores of Nova Scotia; as to which latter we are desirous that even the shores may be occasionally used for the purpose of carrying on the fisheries by the inhabitants of these states."

Upon this assertion of right on our side and its admission on the other, the Treaty of Peace of Nov. 30th, 1782, was negotiated and signed. The words of that Treaty respecting the Fisheries are as follows:—

"It is agreed that the people of the United States shall continue to enjoy unmolested, the right to take fish of every kind on the Grand Bank and on all the other Banks of Newfoundland; also in the Gulf of St. Lawrence, and at all other places in the sea, where the inhabitants of both Countries used at any time heretofore to fish; and also that the inhabitants of the United States shall have liberty to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use (but not to dry or cure the same on that island); and also on the coasts, bays, and creeks of all other of his Britannic Majesty's dominions in America; and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbours and creeks of Nova Scotia, Magdalen Islands, and Labrador, so long as the same shall remain unsettled; but so soon as the same or either of them shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlement without a previous agreement for that purpose, with the inhabitants, proprietors or possessors of the ground."

Nothing can be more clear or definite than this Article. It admits a common right on the part of the Citizens of the United States with the subjects of Great Britain.

What those Citizens and subjects had been accustomed to do, they are to have a right to do thereafter. It is not a right granted, but a right acknowledged and continued.

It is undeniable that under this provision of the Treaty of Peace of 1783 & the preliminary Treaty of 1782 the citizens of the United States continued to carry on the Fisheries in all the Eastern waters, with the exception of approaching to and using the shores in certain localities.

It is admitted that by these treaties, the right of approaching immediately to, and using the shore for drying fish, is called a *liberty*, & throughout this discussion it is important to keep up constantly the plain distinction between an acknowledged right, and a conceded *liberty*. When the United States became an independent nation, the territorial limits of England, & her colonies became interdicted to them, as to other foreign States. And the rule of the public law which gives the right of jurisdiction to the owner of the land, over the adjacent sea, to the extent of three marine miles, (not leagues), no doubt attached to all the colonies and provinces of England, as well against citizens of the United States, as the subjects of other nations. From the conclusion of the peace, to the breaking out of the war of 1812, the citizens of the United States enjoyed fully and freely all the rights acknowledged, and all the liberties granted by that Treaty.

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Afterwards in the year 1815 a very able correspondence took place between Lord Bathurst, His Majesty's principal Secretary of State, & the Colonies, and Mr. John Quincy Adams, the Minister of the United States in London. In this correspondence the grounds assumed and attempted to be maintained by the British ministry are,— That the right of the United States to the Eastern fisheries was derived from the third article of the Treaty of 1783, and from that alone; and that the claim of an independent state to occupy and use at its discretion, any portion of the territory of another, without compensation or corresponding indulgence, cannot rest on any other foundation than conventional stipulation; that the stipulations of the Treaty were founded on reciprocal advantage & mutual convenience; that the duration of the privileges contained in the Treaty, depended on the duration of the instrument; that Great Britain knew of no exception to the rule, that all treaties are put an end to by a subsequent war between the same parties; that in the Treaty of Ghent there was no reference express or implied to the Treaty of 1783, as still in force; that it is not unusual for treaties containing recognitions and acknowledgments of titles in the nature of perpetual obligations, to contain, likewise, grants of privileges liable to revocation, and such was the character of the Treaty of 1783; the acknowledgment of the independence of the United States was of the former character & the right to fish within British limits, and to use British Territory was of the latter; that The language of the Treaty itself shows this distinction; for Great Britain acknowledged the right of the United States to take fish on the Banks of Newfoundland, & other places from which Great Britain had no *right* to exclude an independent nation. But they were to have liberty to cure and dry their fish in certain unsettled places within His Majesty's dominions. As to the origin of the fishery privileges, so long as the United States constituted a part of the British dominions, the inhabitants had the enjoyment of them, as they had of political and commercial advantages; but they had, at the same time, duties to perform as British subjects; but when they became an independent nation, as they were released from the duties, so they became excluded also from the advantages of British subjects.

To all this Mr. John Quincy Adams replied that the Treaty of 1783, was from its subject matter as well as from the relations previously existing between the parties to it, peculiar; that it was intended to constitute a new and permanent state of diplomatic relations between the two Countries which would not and could not be annulled by the mere fact of a subsequent war between them. This was stated with confidence because Lord Bathurst himself admitted, that the whole of the Treaty of 1783 is of this character with the exception of the article concerning the navigation of the Mississippi, and a small part of the article concerning the fisheries. To the statement that Great Britain knew of no exception to the rule that all treaties are determined by a subsequent war between the parties, it was answered that it was not only novel, but unwarranted by any of the received authorities upon the law of nations, unsanctioned by the practice and usages of sovereign states, and tended to multiply the incitements to war, and could not be reconciled with the admission that, Treaties usually contain, together with the articles of a temporary character, liable to revocation, recognitions and acknowledg-

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ments *in the nature of perpetual obligations;* That if war puts an end to all treaties, what could be the meaning of those articles which in almost all treaties of commerce are provided expressly for the contingency of war & which during the peace are without operation? As for instance, the 10th Article of the Treaty of 1794 between the U. S. & Great Britain; That there are many exceptions to the rules laid down by Lord Bathurst, such as those relating to all engagements contracted with the understanding that they are to operate equally in war and peace, or exclusively during war, to all engagements by which the parties superadd the sanction of a formal compact to principles dictated by the eternal laws of morality & humanity; and finally to all engagements, which are in the *nature of perpetual obligations*—to which latter class belongs the Treaty of Peace of 1783; That Lord Bathurst was mistaken in supposing that there was no reference in the Treaty of Ghent, to the Treaty of 1783, whereas in four of the Articles of the Treaty of Ghent, the Treaty of 1783 is not only named, but its stipulations form the basis of new engagements between the parties.

Mr. Adams contended that the United States had peculiar and original rights to the Fisheries, having made their discovery & improved them, and from their proximity to the Fishing Banks, had prosecuted them to greater advantage than they ever had been by the remoter parts of the Empire, and finally because they had contributed their full share, and more than their share, in securing the conquest from France of the provinces on the coast, on which these fisheries are situated.

And it was from these considerations that, in the Treaty of Peace of 1783, an express stipulation was inserted, recognizing the rights and liberties which had always been enjoyed by the people of the United States in these fisheries, and declaring that they should continue to enjoy the right of fishing on the Grand Bank, and other places of common jurisdiction on the North American coasts, to which they had been accustomed while they themselves formed a part of the British nation. It was a stipulation contained in a Treaty by which the king of Great Britain acknowledged the United States as free, sovereign and independent states; a treaty which, by the common understanding & usage of civilized nations could not be annulled by a subsequent war between the same parties. The rights and liberties in the fisheries were, in no respect granted by Great Britain to the United States, but they were acknowledged as rights and liberties enjoyed before the separation of the two countries, and which it was agreed should continue to be enjoyed under the new relations, which were to subsist between them. They could not be cancelled by any declaration on the part of Great Britain; they could only be abrogated by the renunciation of them by the United States themselves. In respect to the use of the words *liberty* and *right*, it was contended that the term *liberty*, far from including in itself, either limitation of time, or precariousness of tenure, is essentially as permanent as that of *right*, and can with justice be understood only as a modification of the same thing; and as no limitation of time is implied in the term itself, so there is none expressed in any part of the article to which it belongs. The restriction at the close of the article is itself a confirmation of the permanency belonging to every part of the article, to which it belongs.

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A correspondence on the subject took place in Washington in 1816 between the Secretary of State of the United States, Mr. Monroe and Sir Charles Bagot, then here, but which came to no practical result.

In 1818 the subject was resumed in London, by Messrs. Gallatin & Rush, on the part of the United States, and Mr. Robinson and Mr. Gouldbourn, on the part of England; the plenipotentiaries of the United States, acting under instructions from the Department of State to the following effect, to wit,—" were authorized to agree to an article whereby the United States will desist from the liberty of fishing, & curing & drying fish, within the British jurisdiction generally, upon consideration that it shall be secured as a permanent right, not liable to be impaired by any future war, from Cape Ray to the Remea Islands, & from Mount Joli, on the Labrador coast, through the Strait of Belleisle, indefinitely north along the coast; the right to extend as well to curing & drying the fish as to fishing."

Now it is to be observed that this instruction respects only the use of the shores, and the fishing, within three miles thereof. No instruction, authority, or permission, is given to Messrs. Gallatin & Rush to surrender, or qualify, in any manner whatever, the original right of fishing in the seas, and Great Bays, & Gulfs, as the same had already been maintained, insisted on, and acceded to, at the Treaty of 1783. Nor does their correspondence show that any such surrender had been made or contemplated by them, or was claimed or insisted on, although it was intimated that the British Plenipotentiaries, according to the idea previously expressed in Lord Bathurst's note, were inclined to maintain that all the provisions of the Treaty of 1783, were abrogated by the war of 1812.

This point will be considered, hereafter in this paper. At present the undersigned, is speaking of the Convention of 1818, and he has to remark—

It must be taken for granted, therefore, that in all which respects this part of the case, the American Commissioners meant to stand, and supposed they were standing, on the original American grounds. Nor is it discoverable that the British Plenipotentiaries thought otherwise, for in none of the Protocols of conference, in no memorandum, nor in any communication of any other kind, do they intimate any purpose of excluding the American Fishermen from the Bay of Fundy, the Gulf of St. Lawrence, or any other Bays, basins or expanses of water to which American fishermen had been in the habit of resorting. On the contrary, it will be found that all their conferences, all their conversations, and all memoranda upon the subject, are confined to the fishing within the three miles from the shore, and the curing & drying of fish on the shore. It is clear therefore, that the words of the Treaty are to be explained by reference to this plain and indubitable understanding of the parties. The important words of this Article are these: "It is agreed between the high contracting parties that the inhabitants of the said United States shall continue to enjoy unmolested, forever, the liberty to take fish, of every kind, on that part of the southern coast of Newfoundland, from the said Cape Ray to Coffin Island, on the Magdalen Islands, and also on the coasts, bays and harbors and creeks from Mount Joli on the southern coast of Labrador, to and through the straits of Belleisle, and thence northwardly indefinitely along the coast; and that the American fishermen shall also have liberty forever to dry and cure fish in any

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of the unsettled bays, harbors and creeks of the southern part of the coast of Newfoundland above described, of the Magdalen Islands, and of Labrador as here above described; but so soon as the same, or either of them, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlement, without previous agreement for that purpose with the inhabitants, proprietors or possessors of the ground; and the United States hereby renounce any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry or cure fish on or within three marine miles of any of the coasts, bays, creeks and harbors of his Britannic Majesty's dominions in America, not included within the above mentioned limits."

It seems to the undersigned that these words according to their natural import, and without any aid to their construction by the Proviso which follows, are confined to fishing within the three miles, and to drying fish on the land. The term "taking fish" certainly does occur in the clause; but is immediately limited by reference to the three miles, and to the process of curing & drying on the land. And the word "bay" in the clause quoted also occurs, but it occurs likewise in the proviso, and we may look to the sense which it bears in the proviso, as explanatory of its meaning in the Article.

In the Proviso the word occurs in this connection, to wit—

"That the American Fishermen shall be admitted to enter such bays and harbors for the purpose of shelter & of repairing damage therein, of purchasing wood, & of obtaining water, and for no other purpose whatever."

The signification of the word bay therefore, is known by its concomitants. It is a bay where shelter is to be had, where damages may be repaired, & where wood and water may be obtained.

It is a bay used synonymously with a harbor, which may be resorted to for the same purposes. It is hardly less than absurd to say, as it appears to the undersigned, that the meaning was that a United States fishing vessel might put into the Bay of Fundy for shelter, or the Gulf of St. Lawrence for repairs, or the Bay of Chaleurs for wood and water.

Most clear is it then, that the term *bay*, used in the proviso, means landlocked recesses, places inaccessible to winds, in short natural harbors.

What ground is there for giving to the term bay, in the principal clause, any broader extent, especially as giving it that broader extent, and understanding it in the sense in which the provincial authorities appear to understand it, would be to suppose that the American Commissioners had given up all the old ground upon which the United States had stood, and which they had maintained from the first, and to violate their own instructions, purposes which there is no proof of whatever kind, that they even contemplated. But there is another consideration still more stringent in the construction of this word *bay*, for the proviso says, That American fishermen may enter into "such bays and harbors for the purpose of shelter and of repairing damage therein, of purchasing wood and obtaining water,"—thus making the term *bay* in the proviso synonymous with the principal article of renunciation, and this shows conclusively that the bay in which American vessels might find shelter, repair damages, and obtain wood and water, was the very bay, and none other, than such as they were excluded from.

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And the undersigned takes the liberty of quoting a passage from a letter of Mr. Everett, Minister Plenipotentiary of the United States, to Lord Aberdeen, as follows,

"The construction set up by her Majesty's colonial authorities, would altogether nullify another, and that a most important stipulation of the treaty, about which there is no controversy, viz. the privilege reserved to American fishing vessels of taking shelter and repairing damages in the bays within which they are forbidden to fish. There is, of course, no shelter nor means of repairing damages for a vessel entering the Bay of Fundy, in itself considered. It is necessary, before relief or succor of any kind can be had, to traverse that broad arm of the sea and reach the bays and harbors, properly so called, which indent the coast, and which are no doubt the bays and harbors referred to in the convention of 1818. The privilege of entering the latter in extremity of weather, reserved by the treaty, is of the utmost importance. It enables the fisherman, whose equipage is always very slender (that of the *Washington* was four men all told) to pursue his laborious occupation with comparative safety, in the assurance that in one of the sudden and dangerous changes of weather so frequent and so terrible on this iron-bound coast, he can take shelter in a *neighboring* and friendly port. To forbid him to approach within thirty miles of that port, except for shelter in extremity of weather, is to forbid him to resort there for any purpose. It is keeping him at such a distance at sea as wholly to destroy the value of the privilege expressly reserved.

"In fact it would follow if the construction contended for by the British Colonial authorities were sustained, that two entirely different limitations would exist in reference to the right of shelter reserved to American vessels on the shores of Her Majesty's Colonial possessions. They would be allowed to fish within three miles of the place of shelter along the greater part of the coast, while in reference to the entire extent of shore within the Bay of Fundy, they would be wholly prohibited from fishing along the coast, and would be kept at a distance of twenty or thirty miles from any place of refuge, in case of extremity. There are certainly no obvious principles which render such a construction probable."

The undersigned now takes leave to draw Mr. Crampton's attention to a more general consideration. He has already observed that from the first, this government has regarded a distinction which is thought to be fundamental and of much importance, between rights and liberties, or privileges. This distinction pervades the whole of the third Article of the Treaty of 1783.

By that article the *right*, not the liberty or the privilege, but the *right* to take fish of every kind on the Grand Bank & on all other Banks of Newfoundland; is expressly recognized by the Crown of England, and then it is further declared "also in the Gulf of St. Lawrence & at all other places in the sea, where the inhabitants of both countries used at any time heretofore to fish."

This plainly is the admission of a Common right, founded on a Common origin, and standing in a Common usage.

But then the Treaty proceeds to declare, that "the inhabitants of the United States shall have *liberty* to take fish of every kind on such part of the Coast of Newfoundland as British fishermen shall use; (but not to dry or cure the same on that island) and also on the

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coasts, bays & creeks of all other of his Britannic Majesty's dominions in America; and that the American fishermen shall have liberty to dry & cure fish in any of the unsettled bays, harbors and creeks of Nova Scotia, Magdalen Islands and Labrador, so long as the same shall remain unsettled; but so soon as the same or either of them shall be settled, it shall not be lawful for said fishermen to dry or cure fish at such settlement, without a previous agreement for that purpose with the inhabitants, proprietors or possessors of the ground."

It is admitted that this is a liberty held by the inhabitants of the United States by concession and not exempted from abrogation by war.

Lord Bathurst in his letter to Mr. Adams of Oct. 30, 1815, attempts to escape from the Argument founded on the acknowledgment of this right of fishery in their Treaty of 1783, by saying that "in the third article, Great Britain acknowledges the right of the United States to take fish on the Banks of Newfoundland & other places, from which Great Britain has no right to exclude an independent nation. But they are to have the *liberty* to cure & dry them in certain unsettled places within His Majesty's territory."

The undersigned respectfully submits to the consideration of Mr. Crampton, that this remark does not cover the whole ground and is quite inconclusive.

If Great Britain intended to acknowledge in behalf of the U. S. no other right as to the fisheries, than such as she could not deny to any other foreign nation, where was the necessity to make any acknowledgment at all?

France, Spain and Portugal have always fished on the Grand Bank of Newfoundland without any permission or acknowledgment of their right by the British Government. The whole claim, if it had no other meaning than what Lord Bathurst ascribes to it, would be without effect and wholly useless. But the very words of the third article show that something more was meant than a mere acknowledgment of the right which the United States possessed, and which other nations possessed as an equal right,—for those words, to repeat them over, are

"It is agreed that the people of the United States shall continue to enjoy unmolested the right to take fish of every kind on the Grand Bank, and on all other Banks of Newfoundland; also in the Gulf of St. Lawrence, and at all other places, in the sea, where the inhabitants of both countries used at any time heretofore to fish."

But "Great Britain acknowledges," says Lord Bathurst, "the *right* of the United States to take fish on the Banks of Newfoundland and other places, from which Great Britain has no right to exclude an independent nation. But they are to have liberty to cure and dry them in certain unsettled places within His Majesty's territory."

It is too plain to be denied that Lord Bathurst commits a great error in this statement of the contents of the third article. That article acknowledges not only the right of American citizens to fish where the subjects of other nations may fish; but in express terms, the right of fishing in common with British subjects on the Grand Bank, and on all other Banks of Newfoundland; also in the Gulf of St. Lawrence and at all other places in the sea, where the inhabitants of both Countries used at any time heretofore to fish; and also that the inhabitants of the United States shall have liberty

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to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use, (but not to dry or cure the same on that island.)

The undersigned now takes leave to draw Mr. Crampton's attention to a more general consideration. He has already observed that from the first, this government has regarded a distinction which it is thought to be fundamental and of much importance between rights & liberties or privileges.

This distinction pervades the whole of the third article of the Treaty of 1783.

By that article the *right*, not the liberty or the privilege, but the *right* to fish in all seas, bays and other places where they had been used, at any time heretofore to fish, is expressly recognized by the Crown of England. And then it is further declared "And also in the Gulf of St. Lawrence & at all other places in the sea, where the inhabitants of both countries used at any time heretofore to fish."

This plainly is the admission of a common right, founded on a common origin, and standing on a common usage.

But then the Treaty proceeds to declare, "that the inhabitants of the United States shall have *liberty* to take fish of every kind, on such part of the Coasts of Newfoundland as British fishermen shall use; (but not to dry or cure the same on that island); and also on the coasts, bays and creeks of all other of His Britannic Majesty's dominions in America; and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbors & creeks of Nova Scotia, Magdalen Islands, and Labrador, so long as the same shall remain unsettled; but so soon as the same, or either of them shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlement, without a previous agreement for that purpose with the inhabitants, proprietors and possessors of the ground."

It is admitted that this is a liberty held by the inhabitants of the United States by concession, and not exempted from abrogation by war.

Mr. Everett to Mr. Ingersoll.

DEPARTMENT OF STATE,
Washington, December 4, 1852.

SIR: The long-continued illness and decease of my predecessor have prevented a reply to Mr. Lawrence's despatches numbered 197 and 200, and his short letter of the 13th August. The two despatches report, in detail, his conferences with Lord Malmesbury on the subject of the fisheries. The latter contains a copy of a note from his lordship of the 13th of August, acquainting Mr. Lawrence with the substance of the orders sent out to the British admiral in command on the fishing-grounds. My attention has also been called to a despatch from Lord Malmesbury to her Majesty's minister here, of the 10th of August last, a copy of which was furnished to Mr. Webster by Mr. Crampton.

These communications could not but allay the alarm which had been so generally excited in both countries, in the month of July last, on the subject of the fisheries, as they conveyed the positive

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assurance of the British government that it was not intended to capture American fishing-vessels, except under precisely the same circumstances as those which have been acted on of late years.

Some progress was made by Mr. Webster, before his death, in preparations to negotiate with Mr. Crampton on the fisheries, and on the subject which the colonies and Great Britain are desirous of connecting with it—I mean commercial reciprocity between the United States and the British provinces. The President is still desirous that this negotiation should proceed, and it will be taken up as soon as possible. He is, however, of opinion, as the two subjects have no natural or necessary connexion, that it will not be advisable to endeavor to include them both in one treaty. Whatever agreement may be made on either of these subjects by treaty will probably require a law to carry it into effect; and the requisite legislation is much more likely to be effected by keeping each subject by itself, unembarrassed by the difficulties of the other.

In this state of things, it is not worth while to renew the general discussion of the occurrences of last summer. There are, however, some remarks in the despatch of Lord Malmesbury to Mr. Crampton which, in justice to this government, to Mr. Webster, and I may add to myself, require some reply.

Lord Malmesbury expresses the "sincerest regret that such a publication (as Mr. Webster's of the 20th July) should have been made, without what appears to her Majesty's government sufficient inquiry into the circumstances of the case," and intimates that this government was hardly justified in supposing that any measures offensive to the United States could have been intended by Great Britain. It must be recollected, however, that Mr. Webster's notice was designed solely as a warning to our fishermen not to incur a risk which was for the moment supposed to be great and imminent. This interest is one of too much magnitude to be left exposed even to possible danger of serious injury. However great our reliance on the friendly intentions of the English government, we had official notice, and that a very short notice, that a more efficient armed force was ordered to the fishing-grounds to act against French and American fishermen. The encroachments complained of by the colonists, and which caused this step to be taken, had never been represented to this government, nor was their precise nature known. Under these circumstances, it was quite natural to believe, and it certainly was believed, that some new and decisive measures of repression were about to be adopted, against which it was important that our fishermen should be warned without a moment's delay.

It is necessary to bear in mind, as a chief source of uneasiness and occasional irritation on this subject, that, while the views of the home government in reference to the fisheries have generally been liberal, and founded on a comprehensive survey of the best interests of the two countries, those views have been steadily, and but too successfully met, as I shall show hereafter, by a colonial influence of an opposite character.

Lord Malmesbury objects to a remark of Mr. Webster, that "with the recent change of ministry in England has occurred an entire change of policy" in reference to the fisheries; and he observes that "the question of protecting British subjects in the exercise of their

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undoubted rights under treaties is one which, in this country, is not materially affected by changes of ministry." Such is unquestionably the case, not only in England, but in all countries where the government is wisely and honestly administered. But there is always room for difference of opinion what are undoubted rights, and what is the best mode of asserting them. I am persuaded that Mr. Webster meant nothing more, or not much more, by his remark, than was meant by Lord Malmesbury himself, when he observed to Mr. Lawrence that the only object of ministers at the present time was "to protect the rights of the colonists in the fisheries, which had been neglected by their predecessors;" and I hope to show, in the sequel of this note, that, if the predecessors of the present ministry had, as Lord Malmesbury assumes been somewhat indulgent in this respect, it was a wise policy, adopted for good reasons.

Lord Malmesbury, having briefly alluded to the earlier history of the discussions between the two governments, says: "In the year 1845 (should be 1843) a correspondence ensued between the British and United States governments, which led to the despatch of a letter from Mr. Everett, the United States minister in this country, to his government dated London, 26th April, 1845. This letter has been published by Mr. Webster, and is unfortunately calculated to cause an incorrect view to be taken of the subject by the American public."

With respect to my letter, thus characterized by Lord Malmesbury, I will first observe, that it was furnished by me to Mr. Webster, (who being then absent from the seat of government, had no access to the public archives,) and was published by him for the purpose of informing the public of what was not generally known, though announced at the time of 1845, and well understood by the fishermen, viz: that the Bay of Fundy had been formally opened to them in 1845, leaving the natural inference to be drawn that it was not likely that it would be closed without notice equally formal. The publication of my note was intended, in this way, to calm the existing excitement, and I have no doubt contributed materially to that end.

If the publication of my letter alone, without the rest of the correspondence, was, as Lord Malmesbury intimates, calculated to cause an incorrect view of the subject to be taken, it must have operated in that way for a very short time. My letter appeared in Boston on the 21st of July, and on the 2d of August, the entire correspondence was communicated to Congress by the President, and immediately transferred to the newspapers. I may add that the only reason why Lord Aberdeen's note of the 10th March, 1845, was not furnished to Mr. Webster, instead of my own of the 26th of April, giving an account of it, was that my letter-books contained only my own part of the correspondence.

Lord Malmesbury specifies two points, in which, as he thinks, my letter of the 26th April, 1845, was calculated to produce an incorrect view of the subject.

The first is, that I stated that Lord Aberdeen's note of the 10th of March, 1845, conceded to American fishermen the right of fishing within the Bay of Fundy, but left doubtful the question of other bays; whereas if Lord Aberdeen's notes, to which Mr. Everett alluded, had been carefully examined by Mr. Webster, and had also been pub-

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lished, Mr. Webster and the public of the two countries, would have seen that, instead of conceding a right, Lord Aberdeen expressly reserved it; but in order to prove the friendly feeling of Great Britain toward the United States, her Majesty's government by Lord Aberdeen's note, "relaxed," as regarded the Bay of Fundy, the right which her Majesty's government felt bound to maintain of excluding American fishermen from that bay.

This purpose of her Majesty's government is as fully apparent in my letters as in Lord Aberdeen's; and if Lord Malmesbury will carefully examine that of the 26th of April, published by Mr. Webster, he will find that he has altogether misapprehended its purport. In the sentence which he quotes from my letter, the important word in reference to the matter in hand is concede. But after stating that the British government had come to the determination to concede to American fishermen the right to fish in the Bay of Fundy, I added, not as Lord Malmesbury's despatch represents me to have done, that I had "claimed the same right as regards other bays," but that I had expressed the hope that the concession was meant to extend to them; and, further, that it ought to be understood in the United States that the extension of the same privilege to the other great bays is a matter of negotiation between the two governments.

All this is certainly true. The "right" which I state to have been conceded is not the right which was reserved by Great Britain. The right conceded to us, as she understood the matter, was the right to fish in the Bay of Fundy; the right reserved by Great Britain was the right to exclude our fishermen from that bay; and this right, as she deemed it, she relaxed in our favor. There is not only no contradiction between the statements, but the relaxation (as Great Britain considers it) of her right to exclude us from the bay was the foundation, by concession, of our right to enter it. Lord Malmesbury does not surely deny that our fishermen have now a right to enter the Bay of Fundy. The difference between the two governments is that we claim that right under the convention of 1818, while Great Britain admits it under the concession of 1845.

Lord Malmesbury's strictures on my language imply that concession cannot be the basis of right; whereas half the land-titles of Europe have no other foundation. All America is held under charters from the Crown, granting or conceding a property to the grantees; and on the European continent, concession is the technical term for a grant of land.

There is one expression in my letter of 26th of April, 1845, which, hastily read, may have led Lord Malmesbury to suppose that it would cause an impression that Great Britain had acknowledged our right under the convention of 1818 to fish in the Bay of Fundy. That expression is as follows: "I was careful to point out to Lord Aberdeen that all the reasons for admitting the right of Americans to fish in the Bay of Fundy" apply to the other outer bays. This, of course, is true; but it refers to what I had maintained, not to what England had acknowledged. My letter of 26th of April needs only to be carefully read to perceive that its whole tenor is in accordance with the facts of the case, and with the nature of the concession, (as her Majesty's government regarded it,) as to the Bay of Fundy.

In my letter to Lord Aberdeen, of the 25th March, while I strenuously maintained the American construction of the convention,

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which limits to the inner bays the renunciation contained in the first article of the convention, I acknowledged the liberality of her Majesty's government in making what they regarded a concession in our favor; and I am not aware that any misconception has existed as to the opposite grounds taken, of late years, by the two governments on this subject. I say "of late years," for it was just a quarter of a century after the date of the convention before the first American fisherman was captured for fishing at large in the Bay of Fundy.

The other point in which Lord Malmesbury thinks my note was calculated to cause an incorrect view of the subject to be taken by the American public, is this: that it created an impression that Lord Aberdeen had, at my request, referred to the Colonial Office the question whether the relaxation, as to the Bay of Fundy, should be extended to the other outer bays; whereas, as Lord Malmesbury understands it, Lord Aberdeen merely submitted to the Colonial Office the question relating to the seizure of the particular vessels, the "*Washington*" and "*Argus*."

Here I must admit myself at a loss to conceive what other question could arise, or could be supposed to have arisen, under a reference to the Colonial Office of the seizure of the "*Washington*" and "*Argus*," than that of the right of American vessels to fish in the other large outer bays. The *Washington* was captured in the Bay of Fundy; and as far as that individual bay was concerned, the question was already settled. The *Argus* was seized in a large open bay, off the coast of Cape Breton, while she was fifteen miles from the shore. It was somewhat doubtful on what grounds the capture of this vessel was made; but in my letter on this subject I mentioned the doctrine relative to the line drawn from headland to headland, as one of the grounds on which this vessel was supposed to have been seized. What can be plainer under these circumstances, and considering the state of controversy at the time, than that the chief if not the only question which would arise before her Majesty's government, under my complaint relative to the *Argus*, would be whether the relaxation just made in reference to the Bay of Fundy should be extended to the other large outer bays?

But I believe it is in my power to put this point entirely beyond dispute. Nothing is more certain than that this precise question was under the consideration of Her Majesty's government at this time, in consequence of my complaints. This I shall prove by an authority which Lord Malmesbury will admit to be decisive.

On the 19th May, 1845, just four weeks after Lord Aberdeen informed me that my letters of the 25th of March and 2d of April had been referred to the Colonial Office, Lord Stanley (now the Earl of Derby, and at that time Secretary of State for the Colonies) wrote a despatch to Viscount Falkland, governor of Nova Scotia, of which the following is an extract:

"Her Majesty's government, having frequently had before them the complaints of the minister of the United States in this country, on account of the capture of vessels belonging to fishermen of the United States by the provincial cruisers of Nova Scotia and New Brunswick, for alleged infractions of the convention of the 20th of October, 1818, between Great Britain and the United States, I have to acquaint your lordship that, after mature deliberation, her Majesty's government deem it advisable, for the interests of both

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countries, to relax the strict rule of exclusion over the fishing-vessels of the United States entering the bays of the sea on the British North American coasts."

* * * * * * *

"I have to request that your Lordship will inform me whether you have any objections to offer, on provincial or other grounds, to the proposed relaxation of the construction of the treaty of 1818 between this country and the United States."

The above is all of this important despatch which the colonial authorities have thought proper to publish. The only cases of capture of our fishermen, of which I had specifically complained, were those of the "*Washington*" and "*Argus;*" and the above letter of Lord Stanley, of course, demonstrates that I gave the American public no "incorrect view" when I led them, by my letter of 26th April, 1845, to suppose that on my instance her Majesty's government had under consideration, at that time, the question of extending to the other outer bays the relaxation which had taken place in reference to the Bay of Fundy.

Not only so, but it would seem that my representations had been successful; for whereas on the 21st of April Lord Aberdeen informed me that the relaxation announced in his note of the 10th of March was intended to apply to the Bay of Fundy alone, Lord Stanley, four weeks afterwards, as we have just seen, wrote to Lord Falkland that her Majesty's government, after mature deliberation, deemed it advisable, for the interests of both countries to extend the relaxation to the other bays.

The omission of a portion—and that, no doubt, the most important and significant portion—of Lord Stanley's despatch, as published at Halifax, puts it out of my power to quote from it his own words, as to the extent of the proposed relaxation. It appears, however, sufficiently, from the report of Mr. Attorney General Johnston of the 16th June, 1845, that the intention of the imperial government was to admit American fishermen into all bays, creeks, and inlets of which the entrance is more than six miles wide. I cite a passage from the concluding portion of Mr. Attorney General's letter:

"It is hoped, my lord, that if an arrangement such as is contemplated should unhappily be made, its terms may clearly express that the American fishermen are to be excluded from fishing within three miles of the entrance of the bays, creeks, and inlets into which they are not to be permitted to enter.

"Some doubt on this point rests on the language of Lord Stanley's despatch; and the making the criterion of the restricted bays, creeks, and inlets to be the width of the double of the three marine miles would strengthen the doubt, by raising the presumption that the shores of these bays, &c., and the shores of the general coast, were to be considered in the same light, and treated on the same footing."

An extract from another despatch of Lord Stanley, of the 17th of September, will also show that it was intended to admit the American fishermen into all the outer bays of certain dimensions, as it will also unhappily show the cause why that liberal policy was abandoned which had been adopted, as Lord Stanley, in his letter of the 19th of May, 1845, had stated, with great justice, "for the interests of both countries."

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"Her Majesty's government have attentively considered the representations contained in your despatches of 17th of June and 2d of July, respecting the policy of granting permission to the fishermen of the United States to fish in the Bay of Chaleurs, and other large bays of a similar character on the coasts of New Brunswick and Nova Scotia, and apprehending from your statements that any such general concession would be injurious to the interests of the British North American provinces, we have abandoned the intention we had entertained on the subject, and shall adhere to the strict letter of the treaties which exist between Great Britain and the United States, relative to the fisheries in North America, except in so far as they may relate to the Bay of Fundy, which has been thrown open to the Americans under certain restrictions."

You will be able to judge from these authorities whether my letter of the 26th of April, 1845, is justly chargeable with having misled the American public as to the fact that the farther relaxation of the exclusion of our fishermen from the great bays had been at my instance referred to the Colonial Office, and to the consideration of her Majesty's government. Should the entire despatch from Lord Stanley to Lord Falkland, of the 19th May 1845, ever be published, I apprehend that it will not only still more plainly show this, which is apparent from the fragment of it that has appeared at Halifax, but also the reasonableness of the American argument had been practically recognised by her Majesty's government.

Lord Malmesbury alludes to two erroneous suppositions that prevailed, as he believes, in the United States last summer: one, that it was the intention of her Majesty's government to revoke the concession of 1845, relative to the Bay of Fundy; and the other, that, notwithstanding the express terms of the convention, American fishermen are privileged, either by usage or right, to fish upon any part of the British coast within three marine miles of the shore.

I have already remarked on the uncertainty which existed on the first point, as to the real design of the British naval movement. As far as I am aware, the misapprehensions in this respect were as extensive in England as in America. With regard to the second supposed error, whatever suggestion to that effect may have been thrown out in the heat of unpremeditated debate, I can only say that it has never happened to me to fall in with any person who entertained the opinion. Lord Malmesbury himself, on the next page of his despatch, says: "Her Majesty's government are not aware that it has at any time been maintained by the government of the United States that there can be, or that there has ever been supposed to be, the slightest doubt that her Majesty's government are not only entitled, but bound, to maintain that distance free from encroachment."

Lord Malmesbury remarks, that the encroachments of the French were included with those of the Americans, in the notice given by Mr. Crampton to the late Secretary of State, of the 5th of July last. This certainly showed that no exclusive action was contemplated against American fishermen, and was accordingly calculated to mitigate the alarm which for a short time prevailed. The importance which Lord Malmesbury justly attaches to the joint mention of the supposed encroachments, both of France and the United States,

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in the notice given by Mr. Crampton on the 5th of July, makes it a matter of some regret that in the Queen's speech, at the opening of the present session of Parliament, the American encroachments only are mentioned as the cause of the naval movement.

I have already disclaimed the intention of going into a general discussion of the fishery question, but I think it proper to allude to one important misapprehension in the British argument, which, though it has, no doubt, had the chief agency in producing the difference of opinion between the two governments as to the true intent of the convention of 1818, has not, I believe, been pointed out in the diplomatic discussions between the United States and Great Britain. Lord Aberdeen, in his note of the 10th of March, 1845, announcing the relaxation as to the Bay of Fundy, thus expresses himself: "Her Majesty's government must still maintain, and in this view they are fortified by high legal authority, that the Bay of Fundy is rightfully claimed by Great Britain as a bay within the meaning of the treaty of 1818. And they equally maintain the position which was laid down in the note of the undersigned, dated the 15th of April last, that, with regard to the other bays on the British American coasts, no United States fisherman has, under that convention, the right to fish within three miles of the entrance of such bays as designated by a line drawn from headland to headland of that entrance."

The "high legal authority" here referred to was not communicated to me by Lord Aberdeen, and is believed never to have been communicated to the government of the United States. But I think I do not err in supposing the allusion to be to the opinion signed J. Dodson and Thomas Wilde, then the law officers of the Crown, given on a requisition of Lord Palmerston in 1841. In this opinion, which has been published at Halifax, these distinguished jurists say "that no right exists on the part of American citizens to enter the bays of Nova Scotia, there to take fish, although the fishing being within the bay may be at a greater distance than three miles from the shore of the bay, as we are of opinion that the term headland is used in the treaty to express the part of the land we have before mentioned, excluding the interior of the bays and the inlets of the coast."

Now, neither the term "headland," nor anything equivalent or synonymous, occurs in the convention of 1818; and this legal authority, which, no doubt, was mainly instrumental in leading the home government to adopt the colonial construction of the treaty, rests, in this respect, upon an imaginary basis. The law officers of the Crown appear to have mistaken a sentence in the ex parte case made up at Halifax, in which the word "headland" appears for a part of the treaty between the United States and Great Britain, which they were required to expound. The government of the United States cannot but regret that an official opinion which had the effect of reversing the construction of the convention on which Great Britain had acted from 1818 to 1842, which excluded our fishermen from some of the best fishing-grounds, after the undisturbed enjoyment of a quarter of a century, and finally brought the countries to the verge of a deplorable collision, should have been given by the law officers of the Crown without a more careful perusal of the text of the treaty.

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I wish, before closing this despatch, to call your attention to a very important point connected with this general subject. In Lord Aberdeen's letter to me of the 10th of March, 1845, announcing the intention of the Queen's government to allow our fishermen to enter the Bay of Fundy, his lordship says:

"In thus communicating to Mr. Everett the liberal intentions of her Majesty's government, the undersigned desires to call Mr. Everett's attention to the fact that the produce of the labor of the British colonial fishermen is at the present moment excluded, by prohibitory duties on the part of the United States, from the markets of that country; and the undersigned would submit to Mr. Everett that the moment at which the British government are making a liberal concession to the United States trade, might well be deemed favorable for a counter-concession on the part of the United States to British trade, by the reduction of the duties which operate so prejudicially to the interests of the British colonial fishermen."

Having no instructions on this subject, I was able only to reply to it in general terms, that the government of the United States, I was persuaded, would gladly make any reduction in these duties, which would not seriously injure our own fishermen; but that the encouragement of this portion of the sea-faring community had always been considered in the United States, as in Great Britain, as resting on peculiar grounds of expediency.

In the following year, however, and notwithstanding the colonial opposition had, in the meantime, led the home government to abandon the liberal intention of opening all the other outer bays to American fishermen, the prohibitory specific duties of which Lord Aberdeen complained were reduced to a moderate and uniform ad valorem duty. By the operation of another law, called the warehousing act, the fish of the colonies, enters our ports in bond, duty free. In this condition it can be afforded cheaper than our own fish, owing to the enjoyment by the colonial fishermen of those superior fishing-grounds, and superior facilities for carrying on the business, which they secure with so much jealousy to themselves. They consequently now monopolize the foreign trade in our ports. Other domestic regulations to the disadvantage of our own fishermen have contributed to the same end. In this way, a sudden and powerful impulse has been given to the importation of colonial fish into the United States. It was stated in the House of Representatives, in debate, last summer, by a very well-informed member, (Mr. Scudder, of Massachusetts,) that the annual value of the imports of codfish, during the four years next preceding 1846, averaged five thousand eight hundred and fifty dollars, and the average value, annually, during the next four years, was fifty-five thousand one hundred and seventy-eight dollars. The annual value of the imports of mackerel for the four years previous to 1846, was two hundred and nineteen thousand six hundred and twenty-six dollars; and the annual value for the four years succeeding 1846, was four hundred and sixty-five thousand eight hundred and six dollars; showing that since 1846 the importation of colonial codfish had increased tenfold, and that of mackerel more than doubled. The import of mackerel for the year 1850–'51 was five hundred and forty-nine thousand five hundred and twenty-three dollars, being an increase of eighty three thousand

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seven hundred and nineteen dollars over the average of the preceding four years.

Such was the treatment of colonial fish in the ports of the United States, while the fishing interest in the colonies was steadily urging upon the home government those complaints of the encroachments of the American fishermen which led to the naval movement of last summer. If, as Lord Malmesbury intimated to Mr. Lawrence, the late ministry were somewhat remiss in putting a stop to those alleged encroachments, it was probably because they saw that the colonies were gaining a hundred-fold more in the markets of the United States than they could lose from an American fisherman occasionally by inadvertence, or even design, passing the line of the convention in the eager pursuit of a shoal of mackerel. While the United States were reducing duties on colonial fish, and opening their markets to its importation, it was probably deemed inexpedient to allow the colonies to enforce too keenly their monopoly of the best fishing-grounds. Admitting them, as we did, to a competition with our fishermen, which has given them in our own ports the exclusive possession of our foreign trade, the United States seemed to have earned a title to some little indulgence, instead of increased strictness in the exclusion of their vessels from a competition in those prolific waters whose inexhaustible abundance remains undiminished after the resort of two centuries and a half; and in which the gain of one implies no loss to another.

I have called your attention to these facts, to which I do not recollect to have seen any allusion on your side of the water last summer, in order to show you that if, on the one hand, some encroachments have from time to time been made by our fishermen on the reserved fishing-grounds—a thing impossible to prevent, and of little serious injury—the colonists have, in the mean time, been greatly favored by our legislation. Her Majesty's government will find in this fact the assurance that we are predisposed to arrange the whole question of the fisheries on a fair and equitable principle of mutual and equal privilege and favor. I hope, in a very short time, to be able to enter upon the negotiation with Mr. Crampton; and it is the President's desire that it should be conducted on the footing of the most liberal reciprocity. He will deem it a piece of good fortune, if among the last acts of his administration should be a measure calculated to strengthen the friendly relations of the two countries.

As this subject may be one of parliamentary inquiry, and lead to the production of papers, you will read this despatch to the Earl of Malmesbury, and leave a copy of it with him.

I remain, with great respect, your obedient servant,

EDWARD EVERETT.

P. S. December 23—The foregoing despatch, as its date shows, was prepared some time ago; and, though it had already been submitted to the President for his approval, I had made up my mind to ask his permission to withhold it. The conferences between Mr. Crampton and myself, in reference to the entire question of the fisheries and commercial reciprocity, having made the most encouraging progress, I thought it better, upon the whole, to acquiesce in the injustice, no doubt unintentional, done to my government, to my pred-

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ecessor, and myself, in Lord Malmesbury's letter to Mr. Crampton of the 10th of August, than to revive a somewhat unpleasant discussion. But there are some portions of Lord Malmesbury's remarks, in reply to Lord Wharncliffe on the 26th of November, as reported in the London papers, which make it impossible for me to pursue this course.

I am aware of the irregularity of remarking on what is said within the walls of the legislature of a friendly State; but Lord Malmesbury has commented on the debate in the Senate of the United States in July last, and he will not, under the present circumstances, deny me the right of following his example.

I allude to the first portion of Lord Malmesbury's reply to Lord Wharncliffe, in which he endeavors to throw upon the American government, and, individually, upon my predecessor, the responsibility of the alarm of last summer about the fisheries, and even ascribe it (if he is correctly reported, which I am willing to believe is not the case) to a very unworthy motive. Now, I must say more distinctly than I have done in the preceding letter, that Mr. Lawrence's despatches of the 10th and 13th of August led us to suppose that her Majesty's government felt that they had acted precipitately in directing a naval movement towards the fishing-grounds, on a notice to this government both too short and too general to be of any use. We did not ask or expect that any admission to this effect should be made, diplomatically or otherwise; but we certainly did not expect to have the blame transferred to ourselves, with the imputation of unbecoming motives.

After stating that there was no just cause for the publication of Mr. Webster's notice of the 20th of July, Lord Malmesbury is reported to have said: "The noble lord who had just sat down, and who had been for some time a resident in the United States, and who knew the influences which periodical events exercised in those localities might perhaps be able to account for the appearance at that time of a correspondence, which at another period might never have seen the light." And a little further on, Lord Malmesbury ascribes the preparation of the notice to the excitement induced by the disease, whose fatal termination he handsomely laments—a suggestion, by the way, not in perfect harmony with the imputed motive of political calculation.

But Lord Malmesbury may be assured that the alarm felt by Mr. Webster, and shared by the President and all the members of the cabinet, was deep and unaffected. It was caused by information received directly from the provinces. Although Mr. Webster's notice was published on the 20th of July, and for the sake of official form was dated at Washington. Mr. Crampton's note of the 5th of July had never been seen by Mr. Webster, who left Washington that day; nor, if it had been seen by him, was it of a nature to relieve the alarm justly caused by the information transmitted from the colonies. Not wishing to prolong this postscrip, I forbear to enlarge on the character of this information, and to show, as I could easily do, that it could not but have produced a state of great alarm on the part of our fishing interest. If Lord Malmesbury will reconsider for a moment the necessary inferences from his imputation, (hitherto confined to the party press, for which, during a canvass, nothing is too absurd,) he will feel its extravagance, not to say its cruelty to the living and

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the dead. It implies that Mr. Webster—of whom in the latter part of his speech Lord Malmesbury speaks in liberal terms, (though limiting his eulogy to a period subsequent to the appearance of the notice of the 20th of July)—was capable of getting up, for electioneering purposes, a false and shortlived alarm, which, for the time, menaced the peace of the two countries, but was sure to be exposed by the return of the English mail; conduct, to say the least, which would have been as weak as wicked. What Lord Malmesbury is reported to have called a "correspondence," and a "letter," which might not have seen the light but for the recurrence of certain "periodical events," was no correspondence nor letter, but a notice addressed to our fishermen. It was nothing if not published; and it must be published then, or never.

With respect to the "influence of periodical events," for the existence of which in the United States Lord Malmesbury avouches the personal observation of Lord Wharncliffe, I may be permitted to say that I have resided much longer in England than Lord W. has done in America, and have carefully observed the country under the operation of an event of the kind referred to—that is a general election. I respect and admire the popular institutions of England, the fountain, to some extent, of our own. I did not, however, bring away from that country the impression that her distinguished public men are less subject to electioneering influences than our own of the same class. I believe the majority of such men in both countries to be honest and sincere; and that, even when they err in judgment, they transact the public business in good faith. I feel confident that Lord Malmesbury would deem it a just subject of complaint if, in an official statement to Congress, I should, having denied all foundation in fact and reason to a certain portion of the sayings or doings of her Majesty's ministers last summer, during the progress of the election which was going on simultaneously with our own canvass, have imputed to them the motive by which Lord Malmesbury, in effect, accounts for the publication of Mr. Webster's notice of the 20th of July.

This much I have been constrained to say from a sense of duty to this government and to Mr. Webster; feeling that substantial injustice would be done to both in leaving without any notice the remarks made by Lord Malmesbury both in his letter to Mr. Crampton, communicated by his direction to this department, and in his reply to Lord Wharncliffe of the 26th of November.

* * * * * * *

EDWARD EVERETT.

Extract from annual message of President Fillmore, (December 6, 1852.)

Fellow-citizens of the Senate and the House of Representatives:

The brief space which has elapsed since the close of your last session has been marked by no extraordinary political event. The quadrennial election of Chief Magistrate has passed off with less than the usual excitement. However individuals and parties may have been disappointed in the result, it is, nevertheless, a subject of national

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congratulation that the choice has been effected by the independent suffrages of a free people, undisturbed by those influences which in other countries have too often affected the purity of popular elections.

Our grateful thanks are due to an All-merciful Providence, not only for staying the pestilence which, in different forms, has desolated some of our cities, but for crowning the labors of the husbandmen with an abundant harvest, and the nation generally with the blessings of peace and prosperity.

Within a few weeks, the public mind has been deeply affected by the death of Daniel Webster, filling, at his decease, the office of Secretary of State. His associates in the executive government have sincerely sympathized with his family and the public generally on this mournful occasion. His commanding talents, his great political and professional eminence, his well-tried patriotism, and his long and faithful services, in the most important public trusts, have caused his death to be lamented throughout the country, and have earned for him a lasting place in our history.

In the course of the last summer, considerable anxiety was caused, for a short time, by an official intimation from the government of Great Britain that orders had been given for the protection of the fisheries upon the coasts of the British provinces in North America against the alleged encroachments of the fishing-vessels of the United States and France. The shortness of this notice, and the season of the year, seemed to make it a matter of urgent importance. It was at first apprehended that an increased naval force had been ordered to the fishing-grounds to carry into effect the British interpretation of those provisions in the convention of 1818 in reference to the true intent of which the two governments differ. It was soon discovered that such was not the design of Great Britain; and satisfactory explanations of the real objects of the measure have been given, both here and in London.

The unadjusted difference, however, between the two governments, as to the interpretation of the first article of the convention of 1818, is still a matter of importance. American fishing-vessels, within nine or ten years, have been excluded from waters to which they had free access for twenty-five years after the negotiation of the treaty. In 1845 this exclusion was relaxed so far as concerns the Bay of Fundy but the just and liberal intention of the home government, in compliance with what we think the true construction of the convention, to open all the other outer bays to our fishermen, was abandoned in consequence of the opposition of the colonies. Notwithstanding this, the United States have, since the Bay of Fundy was reopened to our fishermen in 1845, pursued the most liberal course toward the colonial fishing interests. By the revenue law of 1846, the duties on colonial fish entering our ports were very greatly reduced, and, by the warehousing act, it is allowed to be entered in bond without payment of duty. In this way, colonial fish has acquired the monopoly of export trade in our market, and is entering to some extent, into the home consumption. These facts were among those which increased the sensibility of our fishing interest at the movement in question.

These circumstances, and the incidents above alluded to, have led me to think the moment favorable for a reconsideration of the entire subject of the fisheries on the coasts of the British provinces with a

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view to place them upon a more liberal footing of reciprocal privilege. A willingness to meet us in some arrangement of this kind is understood to exist, on the part of Great Britain, with a desire on her part to include in one comprehensive settlement as well this subject as the commercial intercourse between the United States and the British provinces. I have thought that, whatever arrangements may be made on these two subjects, it is expedient that they should be embraced in separate conventions. The illness and death of the late Secretary of State prevented the commencement of the contemplated negotiation. Pains have been taken to collect the information required for the details of such an arrangement. The subject is attended with considerable difficulty. If it is found practicable to come to an agreement mutually acceptable to the two parties, conventions may be concluded in the course of the present winter. The control of Congress over all the provisions of such an arrangement, affecting the revenue, will of course be reserved.

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Consul Fraser to Mr. Marcy.

No. 2] UNITED STATES CONSULATE,
Halifax, N. S., May 23d, 1853.

SIR: My last despatch was under date of 30" April (No. 1) advising that I had entered on the duties of this Consulate as "Commercial Agent," &c.

I have now to inform you that His Excellency Vice Admiral Sir G. Seymour arrived here on the 15" inst. in the *Cumberland* (70) Capt. Seymour, and he is making active preparations for protecting the Fisheries of this, and the Neighbouring Provinces. Since his arrival he has despatched the Cutter *Netley* (8) Lieut. Newport, and a smaller cutter to the Bay of Fundy, and during the past week H. M. paddle wheel, Steam Ships, *Argus* (6) 300 H. P. Comr. Purvis and *Basillisk* (6) 400 H. P. Comr. Egerton with the Brig (Sloop) *Espiegle* (12) Commander Hancock, have reached this from England; these with other Steam Vessels, expected to arrive from same quarter, and some hired sailing vessel, are to be specially employed in the Fishery Service.

The Frigate *Vestal* (26) Capt. Hamilton is also here refitting, and will probably go to the Newfoundland Coast for the summer.

H. M. Steam Ship *Devastation* (6) Com. Campbell has gone to Quebec for some slight repairs, and when completed will take her Station in the Gulf St. Lawrence same as last year.

The Provincial Government of Nova Scotia, are also again stirring in this matter, having advertised for two vessels of 60 to 80 tons, each with 25 men, besides the master, to be employed during the fishing season from 18th June next. * * *

* * * I have the honor to be, Sir, your most obt. svt.

ROBERT W. FRASER.

To the Honorable WM. L. MARCY,
Secretary of State, Washington.

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Consul Norton to Mr. Marcy.

No. 86.] CONSULATE OF THE UNITED STATES,
Pictou, Nova Scotia, June 27, 1853.

SIR: I have the honor to communicate to the Department for the information of the Government, intelligence just received from my Agent at the "Magdalen Islands," that the right to prosecute the Fisheries from the shores of those Islands as hitherto enjoyed by American Citizens will be brought in question this season, and that on the arrival of Her Britannic Majesty's Cruisers, attempts will be made to prevent American Fishermen from setting nets in "Pleasant Bay" a right they have always enjoyed in common with British subjects, since the Treaty of 1818. Should such be the case, there are strong reasons for believing that consequences of a serious nature will arise between the Fishermen of both Countries; and as a majority of the American Fishermen have now left home to prosecute the summer Fishery in the Gulf and from the shores of those Islands, entirely ignorant of the probability of such a restriction being placed upon them, I would beg leave to suggest the necessity of placing an armed Cruiser in that quarter for the protection of our Countrymen.

I have the honor very respectfully, Your obt. svt.

B. HAMMATT NORTON,
United States Consul.

Hon. WILLIAM L. MARCY,
Secretary of State, Washington City.

Extracts from "Occasional Productions, Political, Diplomatic and Miscellaneous" by Richard Rush—(published at Philadelphia, 1860).

TO MY EXECUTORS:

Having requested you in my will to publish a letter I wrote in July, 1853, to the Secretary of State, then Mr. Marcy, in answer to an official application from him for my views on the construction of the Fishery Article in the Convention with Great Britain of 1818, it seems proper I should give the reasons for this request.

I was the surviving negotiator of that Convention, all others officially sharing in it directly or otherwise, namely, President Adams, (the younger,) Mr. Gallatin, President Monroe and President Madison, having passed away. Hence the call upon me. It was made while negotiations were going on between the United States and Great Britain to arrange this and other matters of international concern. Great Britain, it may be inferred, expected equivalents if yielding anything to us on this Fishery Question. It was the most important and pressing of any then pending. How it ever became a question, and when, I have endeavored to show; but, once raised by Great Britain, she adhered to it, to the extent of instructing her ships of war to order our fishing vessels away, if found on what she claimed as exclusively her fishing grounds. Lord Elgin, then Governor-General of the British Provinces north of us, was the British negotiator, and the Secretary of State, ours. The negotiations dragged

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heavily for some time, and, out of doors, were thought to have been on the brink of a fruitless termination. Finally, the "Reciprocity Treaty", for regulating our trade and fishing concerns with the Canadas and other British Provinces north of us, was concluded and signed on the fifth of June, 1854.

If asked, did not this Treaty put the question at rest? I answered that it did, for the time being. But the subject is open to other views. A future day may witness the revival of the question. We thought it at rest under the old Revolutionary Treaty of 1783; but it returned upon us after the war of 1812. That war over, we again thought it at rest forever, under the Convention of 1818; but again it came back upon us. It would be unwise to consider the Reciprocity Treaty perpetual, whatever its presumed or real merits. When it does come to an end, this question may be upon our hands once more. The power of England is not on the decline, by any evidences yet before us, but, on the contrary, increases; and her adherence in the future, as in the past, to the policy which tends to foster her commercial interests and maritime strength, may naturally be inferred. It would hence seem no more than prudent that both countries, ours especially, should be in possession of all the lights still attainable, on the true nature of this Fishery Question; which, altogether, is a remarkable one in our diplomatic history.

For more than twenty years the Convention of 1818 was in full operation in the sense in which *our* Government understood the article relating to the Fisheries. After this long acquiescence, Great Britain applied a new and different rule for the operation of the article. Whether she had good grounds for this change in its construction, is the essential inquiry. High names, in the Senate and elsewhere, have so well defended our construction, that it might seem unnecessary for me to bring before the public the views presented in this letter to the Secretary of State, were they not derived from facts intrinsic to the negotiation itself. In directing its publication by my executors, I aim at rendering justice to revered names in our history, and whose humble associate I was in this portion of our public affairs. I aim at showing that this solemn international compact, made under their instructions, and receiving their sanction, did not give up American fishing rights of long existence and great magnitude, but, on the contrary, secured them with the greatest care. In here vindicating their memories against imputed errors or oversights in a matter so grave, and in desiring that the vindication should become known to their country, I trench upon no sense of propriety. As an official document, upon an international subject, no secrecy belonged to this letter, written on a public call upon me by the Government, other than exemption from premature publicity. Whilst the Reciprocity Treaty was under discussion, it was withheld from print by the eminent functionary to whom it was addressed, for reasons deemed sufficient, no doubt, at the time. A voluntary publication of it by me at that time would have been out of place. But the treaty having been perfected, its execution in good faith by both countries, as long as it lasts, cannot be affected by historical facts, or any opinions I may have left for posthumous publication.

RICHARD RUSH.

SYDENHAM, *December, 1854.*

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[A]

Mr. Marcy to Mr. Rush.

DEPARTMENT OF STATE,
Washington, July 6, 1853.

SIR: You are probably aware that within a few years past a question has arisen between the United States and Great Britain as to the construction to be given to the 1st Article of the Convention of 1818, relative to the fisheries on the coast of the British North American Provinces. For more than twenty years after the conclusion of that convention there was no serious attempt to exclude our fishermen from the large bays on that coast; but about ten years ago, at the instance of the provincial authorities, the home Government gave a construction to the 1st Article which closes all bays, whatever be their extent, against our citizens for fishing purposes. It is true they have been permitted to fish in the Bay of Fundy. This permission is conceded to them by the British government, as a matter of favor, but denied as a right. That government excludes them from all the other large bays.

Our construction of the convention is that American fishermen have a right to resort to any bay and take fish in it, provided they are not within a marine league of the shore. As you negotiated the convention referred to, I should be much pleased to be favored with your views on the subject.

I have the honor to be &c.

W. L. MARCY.

The Hon. RICHARD RUSH,
Sydenham, near Philadelphia.

[B]

Mr. Rush to Mr. Marcy.

SYDENHAM, NEAR PHILADELPHIA,
July 18, 1853.

SIR, I had the honor to receive your letter of the 6th of this month relating to the question which has arisen within a few years past between the United States and Great Britain, as to the construction to be given to the first article of the convention of 1818 concerning the fisheries on the coast of the British North American Provinces, and I beg leave to express my regret that unavoidable interruptions have prevented an earlier reply to it.

Your letter gives me to understand, that for more than twenty years after the conclusion of this convention, there was no serious attempt to exclude our fishermen from the large bays on that coast; but that about ten years ago, at the instance of the Provincial authorities, the Home government in England, gave a constitution to the first article which closes all bays, whatever be their extent, against our citizens for fishing purposes; and that although they have been permitted to fish in the bay of Fundy as matter of favor, the Home government denies their right to fish there, or in any of the other large bays.

On the other hand you inform me, that our construction of the convention is, that American fishermen have a right to resort to any bay and take fish in it, provided they are not within a marine league of the shore.

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Under these conflicting constructions, you are pleased to invite my views on the subject as I was one of the negotiators of the convention.

Honored by such a call upon me, I feel that the national rights and interests at stake in the just construction of this convention, are of a description so high as necessarily to command my obedience to the call.

At the same time, with the public duty which your letter devolves upon me and which I am ready to meet, I cannot be insensible to the peculiarity of its nature, coming, as the call does, more than thirty years after the negotiation was held. I might well be distrustful of my personal recollections, and would hardly dare to draw upon them on an occasion so solemn after this long interval, unless under the corroborations of documentary and other evidence. Treaties and conventions as other written instruments are to be interpreted by their own words, in conjunction with the antecedent and collateral facts necessary to the elucidation of their words.

Premising thus much I may be allowed to say, and here at least I am able to speak with confidence, that the convention of 1818 was entered into with great circumspection on our side. Mr. Monroe was then President, and Mr. Adams Secretary of State. Looking to their attributes with reference to this particular question, the former was calm-minded and wise; the latter of quick perception and abundant knowledge, with little predisposition to yield opinions carefully formed on the basis of his country's rights. From the latter, my colleague and myself received our instructions in due form, accompanied by full information the better to guide us in understanding and applying them. I need only recall the name of Albert Gallatin for all to feel how experienced, how sagacious, and how highly-gifted a public man my colleague was. To speak once more of Mr. Adams, it may be safely affirmed, that no one of our official functionaries ever understood the fishery question better, in all its comprehensive extent, or examined it more sedulously in detail. It might almost be said that, in instructing us, he went to the work with something of filial reverence to exalt, if possible, his sense of public duty. He remembered the share which his great revolutionary sire, the elder Adams, had in concluding the treaty with great Britain in 1783, and knew that he would have preferred surrendering his commission to surrendering our rights to the fisheries in any of the seas, bays or gulfs of the colonial coasts of British America. The negotiations of that convention had before them therefore, supposing they could have been negligent themselves, the prospect of rebuke from their government if, by the use of incautious words, or omission of apt ones, they became the means of depriving American fishermen of the right to resort to *any* bay off that coast and take fish at pleasure. There was, in fact, but the single exception you mention: they were not to go within three miles from the shore, which would barely imply of course a width of over six miles at the entrance of such bay. You will gather from this remark that, as the surviving negotiator of the convention, I coincide in the construction of its first article which our government puts upon it; and I proceed to unfold the main considerations which have long and forcibly impressed upon me the soundness of this construction.

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Among the documents forwarded to us from Washington as in part our guides in framing that article, were divers letters and representations obtained from proper sources in New England, especially Massachusetts, containing information on the whole subject of the fisheries. It was obtained at the instance of Mr. Adams under queries he propounded on every branch of the subject. Familiar more or less with it all his life, his attention had been specially drawn, while Minister in England, to the state into which it had fallen after the treaty of Ghent; and to that also in which he found it on his arrival in Washington in 1817, when recalled from London to be the incumbent of your department. Some steps for its settlement in Washington, which proved unavailing, were taken by Mr. Bagot, who first came over as British minister to the United States after the treaty of Ghent.

The queries instituted by Mr. Adams sought information, very pointedly, as to the *extent* of the fishing grounds necessary to us. When I first received your letter, I was not sure that I had in my possession any of this information in the state in which it was furnished to us; but on since looking carefully into places where I had deposited ancient papers, I have discovered a portion of it, the remainder having been probably taken away by Mr. Gallatin. Or, it may be, that the whole is still to be found among your files. The fragments in my possession have afforded me much satisfaction as they go to strengthen the views which I have so fully and uniformly entertained of the meaning of the first article before knowing that I had them.

From one of the documents, a letter of some length from Daniel Rose, dated Boothbay, January the 22nd, 1818, I make the extract following: "A great disadvantage of having a particular, limited extent of coast is, that our vessels must then go to that only; and this would render the prospect of making a fare expeditiously very uncertain. It is well known that in some years fish are plenty on grounds, where in other years, few or no fish are to be found. It is the practise of our fishermen to try the different grounds as they proceed eastward, and where they find fish plenty, they stop. Thus they sometimes get their cargo on this side of the straits of Belleisle; and at other times they pass through the straits and proceed far north before they find plenty of fish." In the same letter it is said, "If any privilege is to be given up, that of *curing* fish is of the least importance because that inconveniece may be obviated in a great measure by the fishermen making different arrangements." And again he says: "The cape Sable shores are the most used, and of the most importance for us in the district of Maine, comprehending *the Bay of Fundy* and the coast as far east as Whitehead at least."

A letter from J. F. Parrott, dated from the House of Representatives of the U. States, February the 6th, 1818, states that the fishermen of New Hampshire "would view with *extreme apprehension and concern* the adoption of any stipulations having a *tendency* to deprive them of the privilege which they have heretofore enjoyed of frequenting the coasts of the Bay of Fundy and Nova Scotia, and entering the coves for the purpose of procuring bait." Other documents agree to the importance of our holding this fishing ground, as may be inferred from the above extract. All likewise concur in the

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great importance to us of the Gulf of St. Lawrence and the bay of Chaleur. The latter is represented as having been "*famous fishing ground*" before the Revolution, and still productive. Heavy injury is anticipated should we not secure it. There is a letter from Israel Trask to Mr. Tilsbee, member of congress, dated Gloucester, January the 20th, 1818, giving valuable information; and a general concurrence is seen as to the importance of our securing ample fishing ground even if we did not get shore privilege, though the latter also was desirable. If my memory does not fail me, there were strong representations from the honorable James Lloyd, then an eminent senator from Massachusetts, on this head, and especially as to our not losing the bay of Chaleur, though I do not find them among my papers.

Forewarned by information of this nature and much more not now in my possession, it ought not to be lightly supposed that the negotiators of the convention would sign away the right of entering the fishing grounds in *any* of the large outer bays or gulfs. .It would have been a blow upon all the fishermen of New England. It would have been to forget the whole spirit and object of our instructions; to disregard the information which in part dictated them; and to yield up or endanger great public interests, naval and national. The Senate of the United States could never have ratified such a convention. We had come out of the war of 1812 under too high a tone of national feeling, and most especially as regarded our rising naval capabilities and all the sources for sustaining them.

The idea of fencing us out by a line drawn from "headland to headland" by any of those large outer bays, is perfectly new. It has burst upon us as altogether an *ex post facto* affair. No such words are in the Convention. I was amazed when I first caught the rumor of them. Since receiving your letter I have diligently searched through all my papers, including the memorandums and informal notes which passed between the negotiators on both sides from time to time whilst the negotiation was in process. I find no trace or shadow of them on any protocol or elsewhere from the beginning to the end of the whole negotiation. Yet the presence of such words in the convention is *assumed* in an opinion, as published in the newspapers, which the Attorney general and Advocate general of England have given against our construction of the instrument; and this assumption would seem to be an essential prop of their opinion. It was drawn forth, as is stated, under the requisition of Lord Palmerston at the instance of the public authorities in Nova Scotia in 1841. The period of invoking such an opinion against us was somewhat remote. It came *twenty-two* years after the date of the convention.

It is indispensable to the just construction of this high international compact to which the attention of both nations is now directed, to recall the state of things existing when it was formed; and although this has been a well-understood branch of the question, hitherto, its summary but distinct recapitulation in outline becomes fully appropriate at the present juncture.

By the old treaty of peace of 1783 which separated the two countries, we secured these valuable fishing rights. Britain said we lost them by the war of 1812. We denied it. Her doctrine was, that war abrogated all pre-existing treaties. We admitted this to be the gen-

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eral rule, but insisted that there were exceptions to it; and we denied altogether its application to the treaty of :83. That was not a treaty to be judged by common rules. It split an empire in twain. Britain did not *grant* us our Independence by that treaty, but *acknowledged* it. She did not grant us our boundaries. She *agreed* to them—She did not *grant* us our fishing rights—She *agreed* to them. All these we won in arms. We treated with our great adversary for peace, and desired it; but we treated as a co-equal sovereign nation. Had not the fishing rights we insisted upon been agreed to, the treaty of peace would not have been concluded. It may be here incidentally mentioned as both curious and illustrative that the elder Adams took as a motto from his seal "*Piscamur et benamur ut olim;*" meaning that our fishing grounds and hunting grounds must be as hitherto—the latter then having reference to the Mississippi as our western boundary. We did not *after* the separation, claim the right to cure and dry fish upon *her* shores. *That* would have been to trench upon her territory; but we did *insist* upon our full right to fish in the sea, and in *all* the open bays and gulfs where we had been accustomed to fish before. We considered these rights as fixed and irrevocable—like our boundaries, or our Independence. They were founded in beneficence, as producing human food; a reason why they should be the more liberally interpreted and extended. They had also a paramount foundation in equity for us from the historical fact that in past time before the Revolution, when we were all British subjects together, the people of New England had done more by far to discover and use all these very fishing grounds, than any other people of the British empire. Mr. Monroe while Secretary of State under President Madison, in giving instructions to our ministers at Ghent in 1814 in regard to the fisheries, in case any attempt should be made by Britain to demand their surrender, used this emphatic language; viz, "they [with other rights mentioned] must not be brought into question, and if insisted on, *your negotiations will cease.*"

Our whole doctrine was powerfully argued and illustrated by Mr. Adams when Minister in London after the treaty of Ghent, in two diplomatic notes, one to Lord Bathurst in September 1815, the other to Lord Castlereagh, in January 1816. Lord Bathurst replied, in an elaborate note to Mr. Adams, of October 1815. In this note he fully made known that England was not less unequivocal in the opposite doctrine. The two countries being decidedly at issue, and, according to the ground England took, no treaty regulation of the subject being in existence, her cruiser began to capture our fishing vessels in the waters where we thought our right to go was as complete as ever. The danger was imminent—Collision might take place at any moment. *Then* it was that further captures were forborne until the two governments could calmly and deliberately interpose in the hope of some satisfactory adjustment. This summary presents the precise attitude of the two nations and their negotiators, when the negotiation of 1818 opened.

After protracted difficulties, anxieties, and hesitations on this momentous topic, momentous because we on our side thought that a rupture between the two countries would ultimately follow the failure to arrange it, the negotiation, which commenced in August, 1818, happily terminated in the signature of the convention on the 20th of October of that year.

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In signing it, we believed that we retained the right of fishing in the sea, whether called a bay, gulf, or by whatever other term designated, that washed any part of the coast of the British North American Provinces, with the simple exception that we did not come *within a marine league* of the shore. We had this right by the law of nations. Its confirmation was in the treaty of :83. We retained it undiminished, unless we gave it up by the first article of the convention of 1818. This we did not do. The article warrants no such construction. Mr. Everett when minister in London, writing to Lord Aberdeen, August the 10th 1843, under instructions from the Secretary of State, remarks that the right of fishing off any part of the coast of Nova Scotia (consequently in the Bay of Fundy) at a greater distance than three miles, is so plain, that it would be difficult to conceive on what ground it could be drawn in question had not attempts been made by the Provincial authorities of her Majesty's government to interfere with its exercise; and Mr. Stevenson, minister in London before Mr. Everett, while writing to Lord Palmerston, March the 27th, :41, in reference of our right to fish in the large outer bays, says, "the stipulations of the treaty (convention of 1818) are believed to be too plain and explicit to leave room for doubt or misapprehension."

As to the Bay of Fundy, part of its coast belongs to one of the states of the Union—Maine. Hence Britain cannot claim it as her exclusive jurisdiction. Had Mr. Gallatin been told by the British plenipotentiaries, that the first article of the convention would close the extensive waters of that bay against our fishermen, I do not believe he would have signed it; nor could I have signed it. The spirit, context, all the concomitants of the article, pointed to a different meaning. I need not cite all its words. You know them. It will be enough to bring into view the proviso which follows the clause of renunciation. That part was thus: "And the United States hereby renounce forever any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish, *on or within three marine miles* of any of the coasts, bays, creeks or harbors of his Britannic Majesty's dominions in America not included within the above mentioned limits: (those set out for us in the beginning of the article;) provided however, that the American fishermen shall be permitted to enter such bays or harbors *for the purpose of shelter and of repairing damages therein, of purchasing wood and of obtaining water;* and for no other purpose whatever."

These are the decisive words in our favor. They meant no more than that our fishermen whilst fishing in the waters of the Bay of Fundy should not go nearer than three miles to any of those *small inner bays creeks or harbors* which are known to indent the coasts of Nova Scotia and New Brunswick. To suppose they were bound to keep three miles off *from a line drawn from headland to headland on the extreme outside limits of that bay*, a line which might *measure* fifty miles or more according to the manner of drawing or imagining it, would be a most unreasonable and therefore unnatural supposition. I cannot think that it entered the minds of the British plenipotentiaries any more than ours. For would it not be useless to tell half ship-wrecked fishermen they might cross such a line for the purpose of seeking shelter in bays, creeks and harbors lying at an immense distance *inside* of it? Tempest-tost *outside* of a great sea-line like

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that, damaged in sails and rigging, how were they to reach, through howling winds and roaring waves, the sheltering havens they desired? To suppose it, is a mockery; and similar reasoning applies to all the other large bays and gulfs.

We inserted the clause of renunciation. The British plenipotentiaries did not desire it. Without it, room might have been left for the inference that what we got under the convention was a *grant* to us by Britain; whereas our ground being that, with the exception of *shore* privilege, our fishing rights remained as under the treaty of :83, we could receive nothing which had been agreed upon by the first article, in the light of a *concession* or *favor* from her. We took it only as part of a coequal agreement.

In conformity with our construction, was the practise of Britain after the conversation was ratified. Our fishermen had been waiting for the word not of *exclusion*, but admission, to those large outer bays. They had been shut out, some of them captured, and all warned away, after the treaty of Ghent. The interval was an anxious and painful one to them. Accordingly as soon as the convention went into operation, they eagerly hastened to their ancient resorts; reinstated by the provident care of their Government. No complaint was made or whispered by any member of the British government of that day, of which I ever heard.

I remained minister at that court seven years after the signing of the convention. Opportunities of complaint were therefore never wanting. If intimated to me, it would have been my duty to transmit at once every such communication to our government. Nor did I ever hear of complaint through the British Legation in Washington. It would have been natural to make objections when our misconstruction of the instrument was *fresh*, if we *did* misconstrue it. The occasion would have been especially opportune when I was subsequently engaged in extensive negotiations with England in 1823–4, which brought under consideration the whole relations, commercial and territorial, between the two countries including our entire intercourse by sea and land, with her North American colonies. Still, silence was never broken in the metropolitan atmosphere of London whilst I remained there. Your letter informs me that for more than twenty years after the convention, there was no serious attempt to exclude us from those large bays; and Mr. Everett, writing as Secretary of State, only on the 4th of December last to Mr. Ingersoll, minister in England, renders more definite the time you whould indicate by saying, that, "it was just a *quarter of a century* after the date of the convention before the *first* American fisherman was captured for fishing at large in the Bay of Fundy!" I find it difficult, under any lights at present before me, to explain the extraordinary circumstances which environ this international question, consistently with all that is due to the high party on the other side; feelings the most friendly being due to her from the magnitude of the interests bound up in the subsistence of relations the most harmonious at all points between the two countries, and which all ought to cherish and improve.

It is impossible for me to doubt that the convention as *we* now construe it, and have *always* construed it, was entirely acceptable to the British government *at the time of its adoption.* But I remember also that other feelings were afloat at that epoch beyond the pale of

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the government in London. The fishery article was sharply assailed out of doors. Journals of prominence in the capital represented it as sacrificing high maritime interests of England, following up like sacrifices which they said had been made in the treaties of Vienna. The Legislative Assembly and Council of Nova Scotia, sent forward murmurs deep and loud from that quarter. They alleged, that the prospects of British Colonial industry and advantage in North America were exposed to a shock in the competition which this fishery article opened up to the Americans. The commingling tides of complaint from the press and colonies served to swell for a time popular clamor against us; a feeling not without example in England, as those know who may have had opportunities of close observation, when her government has kept aloof and been friendly to us. The clamor had its run and died away. The British statesmen then wielding her power, Lord Liverpool, was Premier and Lord Castlereagh, Foreign Secretary, had probably not been unaware that there would be, to some extent, an outside feeling of dissatisfaction. They knew their position, and were prepared for its responsibilities. Paying respect to the convictions prevailing in the United States that our fishing rights were *not* lost by the war of 1812, though so contrary to the British opinions, they determined upon the compromise which the convention affected. It was in this spirit of amity that a formidable source of dissention was removed, without implicating the honor of either nation; whilst the ultimate interests of both were thought, by the insert in both, to have been best advanced by the compromise.

I render with satisfaction this passing tribute to the Liverpool ministry, and especially to Lord Castlereagh; due the more, as it was not the only occasion during my long mission when its amicable counsels touching the United States, interposed to ward off trouble to the two nations, when there was no adequate cause for it on our side. It may be added in this connexion, not as an irrelevant fact but pertinent to the matter I have had in hand, that it was the same ministry with which we negotiated in London the convention of July, 1815. This international compact, as far as it went, secured the fairest measure of reciprocity in our commerce and especially our navigation with Britain, which, up to that period, we had been able to obtain from any English ministry, whig or tory, since the day of separation from Britain. Perhaps another fortunate element may be said to have here lended itself with our labors. It was a ministry the most strongly seated in influence and power of any which had preceded it for a century, because governing England at the epoch of Napoleon's downfall. Such a ministry had no fears in being just to us on the fishery question. It was not to be shaken by an outside blast and disregarded it.

Nothing but the great importance of the subject and the peculiar dilemma in which the disputed question has come to be placed, could justify me in making this letter so long. I must venture to hope that this will be my shield in your eyes.

A brief, a reluctant, reflection must close it. This will relate to the letter from Mr. Webster, written in July :52, while he was Secretary of State. I desire to speak with nothing but reverence of an American statesman whom death has canonized. To his great abilities, exalted patriotism, and inappreciable services, all do homage.

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None more fully than I do. A momentary inadvertence found its way into that letter, which, under the public obligation cast upon me by your call, I am not at liberty to pass over. It is the passage in which he states that it was "an oversight in the convention of 1818 to make a concession to England, since the United States had usually considered that those vast inlets or recesses of the ocean ought to be open to American fishermen as freely as the sea itself to within three marine miles of the shore." The letter was written when he was away from his department. Full of diversified public occupation and with his great mind under corresponding solicitudes, he may have been momentarily at fault; at a season, too, when perhaps his health was feeling the approaches of that fatal malady which was so soon afterwards to deprive his country of his valuable life, and take from the world one of its towering names. This inference is the more strongly forced upon me as in the same letter he refers to the opinion of the English crown lawyers without noticing the grave error stamped upon its face; that they assured *the existence of words not in the convention*. I should reproach myself for this allusion, but for the influence which the great name of Mr. Webster might otherwise lend in directions unfavorable to the just rights of the country he so dearly loved. Happy am I to think that this letter nevertheless closes with a dissent from the construction given by the crown lawyers to that solemn convention which it is the aim of this letter to show is chargeable with no oversight.

I have the honor to remain with great respect your obedient servant,

RICHARD RUSH.

The Honorable W. L. MARCY,
Secretary of State.

Consul Fraser to Mr. Marcy.

UNITED STATES CONSULATE,
Halifax, Nova-Scotia, 17th August, 1853.

Honble. W. L. MARCY,
Secretary of State, Washington,

SIR: Your despatch of 27th ulto. has been received, and I am much gratified with its contents.

I now have the honor to acquaint you of the arrival at this Port on the fifth instant of the United States Steam Ship "*Princeton*" Captn. H. Eagle, bearing the broad pennant of Commodore William B. Shubrick, to whom I have rendered all necessary attention during his stay.

Commodore Shubrick was treated with the most marked attention by the Military, Naval, and Civil Authorities, and Citizens of this place, and also with the Customary honors to which his rank, entitled him.

The U. S. Steamship "*Fulton*," Lieutenant Commander Watson, also arrived here on the sixth inst. but left again early on the eighth for Portsmouth, N. H., with despatches, and from whence the Com-

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modore has been anxiously looking for her return, but finding (by Telegraph) yesterday that she had not left Portsmouth, and hearing a rumour that the Am. Fishing Schooner "*Starlight*" had been seized, and taken into Charlotte Town, P. E. Island, for violating the Convention, he concluded to start at once for that locality, and accordingly got steam on the Ship, and left this, last evening, leaving orders for the "*Fulton*" to follow as soon as possible.

I have the honor to be, Sir, Your most obt. servant,

ROBT. W. FRASER,
Consul, U. S. A.

Consul Fraser to Mr. Marcy.

Number 9. UNITED STATES CONSULATE,
Halifax, Nova-Scotia, 27th August, 1853.

Honble. W. L. MARCY,
Secretary of State, Washington.

SIR, In my last despatch of Seventeenth Instant, I had the honor to acquaint you with the movements of Commodore Shulbrick up to that date. Since then I learn he has arrived at Charlotte town, P. E. Island, having stopped at the Strait of Canso, and at Pictou on his way thither.

The "*Fulton*" on her return from Portsmouth, U. S. A., called here on Sunday last and proceeded again immediately in search of the "*Princeton*" and at last advices was in company with that ship.

The Fishing Schooner "*Star Light*" alluded to in my despatch of 17th as having been detained at P. E. Island, I understand has been released, *on payment of expenses and costs.*

There is nothing special from the Fisheries lately. With much respect,

I have the honor to be, Sir, Your obt. servant,

R. M. FRASER.

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Mr. Seward to Mr. Adams.

No. 1241.] DEPARTMENT OF STATE,
Washington, January 18, 1865.

SIR: I transmit herewith, authenticated under the seal of this department, a copy of a joint resolution[a] of the Congress of the United States approved on this date, in regard to the termination of the treaty concluded between the United States and her Britannic Majesty on the 5th of June, 1854, commonly known as the reciprocity treaty. The President directs me, in compliance with the 5th article of that instrument, and with the requirement of the aforenamed resolution, to instruct you to communicate to her Majesty's government a certified copy of the enclosed papers, and formally to notify her Majesty's government, on the 17th of March next, or as soon thereafter as possible, that as it is considered to be no longer for the interest of the United States to continue the said treaty in force, it will terminate and be of no further effect at the expiration of twelve months from the date upon which the notice shall be given.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

Mr. Adams to Mr. Seward.

No. 908.] LEGATION OF THE UNITED STATES,
London, March 23, 1865.

SIR: In accordance with the instructions contained in your despatch, No. 1241 of the 18th of January, last, I addressed a note to Lord Russell on the 17th of this month, giving formal notice of the termination of the reciprocity treaty, and enclosing, at the same time, a certified copy of the resolution expressing the sense of both houses of Congress on that subject. This note was delivered by the messenger of this legation at the Foreign Office at 2 p. m., notice of which was entered by him on the envelope, and also reported to me on his return. Not long afterwards I received from his lordship his own acknowledgment of the reception of it. Copies are herewith transmitted.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

Hon. WILLIAM H. SEWARD, &c., &c., &c.

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[a] For joint resolution, see p. 95.

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[Inclosure.]

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, March 17, 1865.

MY LORD: Under instructions from the government of the United States, I have the honor to transmit to your Lordship a certified copy of a joint resolution of the Congress of the United States, approved by the President on the 18th of January, 1865, in regard to the termination of the treaty concluded between the United States and her Britannic Majesty on the 5th of June, 1854, commonly known as the reciprocity treaty.

I have the honor further to inform you that I am directed to notify her Majesty's government that, as it is considered no longer for the interest of the United States to continue this treaty in force, it will terminate and be of no further effect, as provided by the terms of the instrument, at the expiration of twelve months from the date of the reception by your lordship of this notice.

I pray your lordship to accept the assurances of the highest consideration with which I have the honor to be, my lord,

Your lordship's most obedient servant,

CHARLES FRANCIS ADAMS.

Right Hon. EARL RUSSELL, &c., &c., &c.

[Sub-inclosure.]

Earl Russell to Mr. Adams.

FOREIGN OFFICE, *March 17, 1865.*

SIR: I have the honor to acknowledge the receipt of your letter of this day, containing a resolution of the Congress of the United States, approved by the President, in regard to the termination of the treaty of 1854, commonly known as the reciprocity treaty.

Her Majesty will instruct Sir Frederick Bruce, on his proceeding to Washington as her Majesty's envoy extraordinary, upon the subject.

I have the honor to be, with the highest consideration, sir, your most obedient, humble servant,

RUSSELL.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

Sir F. Bruce to Mr. Seward.

WASHINGTON, *February 16, 1866.*

SIR, As the Reciprocity Treaty is about to expire, I am anxious to report in a formal shape the disposition of the Government of The United States with reference to the important question of its renewal, and I therefore submit for consideration the following proposals, which embody the views of Her Majesty's Government with respect to it:

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Her Majesty's Government have seen with much satisfaction the increase of the trading relations between the United States and the British provinces which has grown up under the Treaty, and the beneficial results of the stipulations it contains, by virtue of which each Contracting Party enjoys the uninterrupted use of the facilities of transport to the seaboard possessed by the other, and participates side by side in the fisheries, without restriction or interference.

Her Majesty's Government would be well content to renew the Treaty in its present form.

At the same time they are ready to reconsider the Treaty in conjunction with the Government of the United States, if such a course would be agreeable to them, and so to modify its terms as to render it, if possible, more beneficial to both countries than it has hitherto been.

If the Government of the United States should feel disposed to adopt the latter course, an arrangement of a provisional character might be entered into with a view to afford time for fresh negotiations, and I should take pleasure in submitting to the consideration of my Government any proposal to that effect which you might do me the honour to communicate to me.

I have, &c.

FREDERICK W. A. BRUCE.

W. H. SEWARD, Esq.

Mr. Seward to Sir F. Bruce.

DEPARTMENT OF STATE,
Washington, February 17, 1866.

SIR, I have the honour to acknowledge the receipt of a note which you addressed to me on the 16th instant, concerning a proposed extension of the Reciprocity Treaty. Perhaps I could not reply in any other manner more satisfactorily than I shall now do by stating anew the verbal explanations which I have had heretofore occasion to make to you upon that subject:

The character of the constitutional distribution of public affairs among the different Departments of the Government is well known. It confides commerce and national finance expressly to the Legislature.

The now expiring Reciprocity Treaty constitutes almost the only case in which the Executive Department has, by negotiation, assumed a supervision of any question of either commerce or finance. Even in that case the Executive Department did little more than to make a Treaty, the details of which had been virtually matured beforehand in the Congress of The United States, and sanction was given to the Treaty afterwards by express legislation.

The question of continuing that Treaty involves mainly subjects of the special character which I have before described.

Careful inquiry made during the recess of Congress induced the President to believe that there was then no such harmony of public sentiment in favour of the extension of the Treaty as would encourage him in directing negotiations to be opened. Inquiries made since the re-assembling of Congress confirmed the belief then adopted that Congress prefers to treat the subject directly, and not to approach it through the forms of diplomatic agreement.

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In accordance with this conviction, all communications, verbal and written, upon the subject, have been submitted to the consideration of the proper Committees of Congress, and the question of extending a system of reciprocal trade with the British Provinces on our frontier awaits their decision.

I have, &c.

WILLIAM H. SEWARD.

Sir F. BRUCE.

The Earl of Clarendon to Sir F. Bruce.

FOREIGN OFFICE, *March 17, 1866.*

[Extract.]

It may be necessary for me to recapitulate very shortly the steps which have been taken by Her Majesty's Government with respect to the Reciprocity Treaty between this country and The United States, which ceases to be in operation this day.

That Treaty was entered into by the two countries in order to avoid further misunderstanding between their respective subjects and citizens in regard to the extent of the right of fishing on the coasts of British North America, and in order to regulate and extend the commerce and navigation between their respective territories and peoples. The misunderstandings to which the Treaty alluded were of a grave character, and had more than once threatened to interrupt the friendly relations which it has ever been the desire of the British Government to maintain with that of The United States. They were happily put an end to by the Treaty, and for a period of nearly 11 years during its existence the subjects and citizens of the two countries have carried on their respective occupations, and have enjoyed the privileges which they have obtained under it, without any question having arisen to disturb the good understanding which had thus been established between the two Governments.

Her Majesty's Government had hoped that a state of things so advantageous to the political relations and to the commerce between The United States and Great Britain and her North American colonies would have been allowed to continue, and that the Government of The United States would not have availed themselves of their right of terminating a Treaty which, in the opinion of Her Majesty's Government, has so well fulfilled the object for which it was entered into and has been so eminently beneficial to both the Contracting Parties. In this hope, however, Her Majesty's Government have been disappointed. On the 17th of March, of last year, Mr. Adams transmitted to Lord Russell a certified copy of a joint Resolution of the Congress of the United States, approved by the President, giving notice of the termination of the Treaty at the expiration of 12 months from that date, as it was considered no longer for the interests of The United States to continue the Treaty in force.

Mr. Seward, however, had informed Mr. Burnley, that with a view of inaugurating a more friendly policy with Her Majesty's Government, he was willing, as the season advanced, to enter into negotiations for a remodelling of the Treaty on terms which might prove, he hoped, advantageous and beneficial to both parties.

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Her Majesty's Government, whilst deeply regretting the step which the United States had considered it advisable to take, instructed you on your arrival at Washington to state to Mr. Seward their willingness to reconsider the Treaty in conjunction with the Government of The United States, to negotiate for a renewal of it, or so to modify its terms as to render it, if possible, even more beneficial to both countries than it had hitherto been. You were further instructed to invite Mr. Seward to inform you in detail of the points upon which a modification of the Treaty was desired.

Owing to events of urgent importance, which occupied the attention of the Government of The United States, and to the serious illness of Mr. Seward, you were unable to execute Earl Russell's instructions on your arrival at Washington, and you subsequently deemed it more prudent, and thought that we should be more likely to obtain the object we had in view, if you were to defer entering into official communication with Mr. Seward on the subject.

The Governors of the British North American Colonies were not less impressed than Her Majesty's Government with the grave consequences that were to be expected from the termination of the Reciprocity Treaty, and were equally desirous either that it should be renewed or that some fresh arrangement should be made having the same objects. Mr. Galt, a member of the Canadian Government, with a view to assisting you in any negotiations which might take place for this purpose, proceeded to Washington at the end of last year, for the purpose of ascertaining the course it might be most advisable for Her Majesty's Government to pursue with reference to the Treaty. Mr. Seward then declared that there were insurmountable objections to the renewal of the Treaty, which could only be effected by a vote of two-thirds from the Senate, which it was hopeless to reckon upon. He expressed himself at the same time not unfavorable to the negotiation of a Treaty, and he suggested that as the question would be brought before the Committee of Finance in connection with revenue arrangements, an attempt should be made to obtain resolutions recommending the extension of the period allowed for the determination of the Treaty. Mr. Seward appears to have subsequently expressed the same opinion to you.

It appeared to Mr. Galt and yourself that it would be advisable to take the course suggested by Mr. Seward, and you agreed that it would be inexpedient to make any official overture on the subject of the Treaty until the experiment of obtaining an extension had been tried, or until there would be reason to believe that the United States Government would manifest in reply a readiness to negotiate.

You were accordingly instructed by me to take such steps as might appear most expedient for procuring a prolongation of the Treaty, and you were directed to communicate on the subject with the Governor of Canada.

Mr. Galt and Mr. Howland, the Postmaster-General of the Province of Canada, proceeded to Washington for the purpose of conferring with you, and of urging through you on the Government of The United States the importance of postponing the termination of the Reciprocity Treaty, so as to afford time for negotiation.

The delegates from the British North American Colonies, after repeated interviews with the Committees of Ways and Means, of which Mr. Morrill was the chairman, in which they ascertained that

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no renewal or extension of the existing Treaty would be made by the American authorities, but that whatever was done must be done by legislation, submitted a memorandum to the Committee as the basis upon which they desired arrangements to be made.

This memorandum was not accepted by the Committee, which drafted a counter-memorandum declaring its readiness to recommend to the House of Representatives for their adoption a law providing for the continuance of some of the measures embraced in the Treaty. The delegates considered that the proposals of the Committee were unacceptable; and finding, after discussion, that no important modifications in the views of the Committee could be obtained, declined to accede to the counter-proposal, and the negotiations terminated.

As you considered, from the terms of this counter-proposal, that the Committee desired to break off negotiations and not to entertain any proposal for the continuation of the Treaty, you deemed it advisable to address a note to Mr. Seward, expressing the readiness of Her Majesty's Government to renew the existing Treaty or to reconsider the Treaty in conjunction with the Government of The United States, if such a course would be agreeable to them, and so to modify its terms as to render it, if possible, more beneficial to both countries than it had previously been. You suggested at the same time to Mr. Seward, that if the Government of The United States felt disposed to adopt the latter course, an arrangement of a provisional character might be entered into with a view to afford time for fresh negotiations, and expressed your readiness to submit to the consideration of Her Majesty's Government any proposal to that effect which Mr. Seward might communicate to you. In reply, Mr. Seward stated that careful inquiry during the recess induced the President to believe that there was no such harmony of public interest in favour of the extension of the Treaty as would encourage him in directing negotiations to be opened, and that inquiries made since the re-assembling of Congress confirmed the belief that Congress preferred to treat the subject directly, and not to approach it through the forms of diplomatic agreement. All communications had accordingly been submitted to the consideration of the proper Committees of Congress, and the question of extending a system of reciprocal trade with the British provinces on the United States' frontier awaited their decision.

The attempts thus made, whether to renew the Treaty, to conclude a new one, or to extend the time for its expiration, in order to admit of negotiations, having failed, and the Treaty having now expired, it becomes the duty of Her Majesty's Government to consider what course they should pursue. By the termination of the Treaty of 1854, two important and undoubted rights of this country, the enjoyment of which, through the operation of the Treaty, were temporarily ceded to citizens of the United States, revert absolutely to the British Crown. Those rights are, first, the exclusive right of fishing by its subjects on the sea-coasts and shores, and in the bays, harbours, and creeks, of the British possessions of North America, except in so much as certain restricted privileges may have been conceded by the Convention of 1818 to American citizens; and, secondly, the exclusive right of navigation by its subjects of the River St. Lawrence, and the canals communicating between the great lakes and the canals in Canada.

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With regard to the navigation of the St. Lawrence and the canals, it is not the intention of Her Majesty's Government to interfere for the present with the privileges which the citizens of The United States have enjoyed during the time the Treaty has been in operation. As regards the privileges of fishing and of landing upon the shores and coasts of Her Majesty's possessions for the purpose of drying their nets and curing their fish, which have been enjoyed by citizens of The United States under the Treaty, Her Majesty's Government are very desirous to prevent the injury and loss which may be inflicted upon the citizens of The United States by the sudden withdrawal of their privileges. They are, however, (now that the Treaty has come to an end), bound by the Act 59, George III., cap 38, as well as by the Acts of the Legislatures of New Brunswick and Nova Scotia, which have obtained the Imperial sanction. By those Acts, which were only suspended during the existence of the Treaty, severe penalties, extending to confiscation of their vessels, with the cargoes, tackle, stores, &c., are inflicted upon all persons, not British subjects, who shall be found fishing or to have been fishing or preparing to fish within the distance of 3 miles of the coast of Her Majesty's possessions in North America.

It becomes the duty of Her Majesty's Government and of the Governments of the respective provinces to enforce the law, and until those Acts are modified or repealed, citizens of The United States will be prohibited from fishing in British waters, from landing on British territory for the purpose of drying their nets and curing their fish, and will be subject to all the penalties which the violation of the law entails.

Under these circumstances, it has been the duty of Lord Monck to issue a Proclamation informing all persons who may be concerned of the state of the law, and warning them of the penalties that they incur by its violation.[a]

Her Majesty's Government are not insensible to the great inconvenience and losses to which the exclusion of American citizens from privileges so long enjoyed by them, and in which capital to a considerable amount has been invested, and labour to a large extent has been employed, must unavoidably subject a great number of persons.

They fear that so long an enjoyment of those privileges may induce those who have been engaged in fishing ventures on the coasts of the British possessions to defy the law and carry on their operations, thus exposing their property to seizure and confiscation. A feeling of irritation may thus be engendered in the Northeastern States of America against the British Government and nation which Her Majesty's Government would deeply regret, and which might lead to serious misunderstandings between the two Governments.

Her Majesty's Government have the satisfaction of feeling that they have done their utmost to prevent these consequences. They have declared their readiness, and they are still prepared, to come to any arrangement with The United States, either by a continuation or a renewal of the Reciprocity Treaty, or by entering into new engagements by which the privileges hitherto enjoyed by American citizens might be still secured to them. The Government of Washington has declined to accede to these proposals.

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[a] For Proclamation, see *ante*, p. 156.

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Her Majesty's Government cannot therefore accept any responsibility for the results which they fear may arise from the termination of the Reciprocity Treaty by the act of The United States' Government themselves—results which they have done their utmost to avoid, and which, if they do occur, Her Majesty's Government will most sincerely deplore.

CLARENDON.

Sir F. BRUCE.

Mr. Seward to Mr. Adams.

No. 1737.] DEPARTMENT OF STATE,
Washington, April 10, 1866.

SIR: I send you a copy of a very suggestive letter from Mr. Richard D. Cutts, who, perhaps, you are aware, was employed, as surveyor for marking, on the part of the United States, the fishery limits under the reciprocity treaty. Mr. Cutts's long familiarity with that subject practically and theoretically entitles his suggestions to respect.

It is desirable to avoid any collision or misunderstanding with Great Britain on the subject growing out of the termination of the reciprocity treaty. With this view I enclose a draft of a protocol, which you may propose to Lord Clarendon for a temporary regulation of the matter. If he should agree to it it may be signed. When signed it is desirable that the instructions referred to in the concluding paragraph should at once be despatched by the British government.

As the fishing season is at hand, the collisions which might be apprehended may occur when that season advances.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

[Inclosure No. 1.]

Mr. Cutts to Mr. Seward.

WASHINGTON, *April 7, 1866.*

SIR: For a full understanding of the differences which now exist in regard to the rights which belong to American fishermen, in the seas bordering the British North American colonies, it is necessary to refer to the treaties and negotiations which preceded the convention of 1818, so far as they relate to the fisheries.

DEFINITIVE TREATY OF PEACE. 1783.

ARTICLE 3. "It is agreed that the people of the United States shall continue to enjoy unmolested, the right to take fish of any kind on the Grand Bank, and on all the other banks of Newfoundland; also in the Gulf of St. Lawrence, and at all other places in the sea where the inhabitants of both countries used at any time heretofore to fish; and, also, that they shall have liberty to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use, but not to dry or cure the same on that island; and also on the coasts, bays and creeks of all other of his Britannic Majesty's dominions in America."

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In the treaty of Ghent, terminating the last war with Great Britain, no allusion was made to the subject of the fisheries.

In July, 1815, complaint was made that American fishing vessels, engaged in the cod-fishery off the coast of Nova Scotia had been ordered away by a British sloop-of-war, and this act, while it was declared to be totally unauthorized by his Majesty's government, led to a correspondence between our minister at London (John Quincy Adams) and Lord Bathurst, in which the United States adhered to the right and liberty of fishing, as secured by the treaty of 1783, on the ground that those rights and liberties were not grants from the King, but the permanent results of a partition of rights at the time of the separation of the two countries and contended, therefore, that they could not be impaired by a state of war. On the other side it was asserted that while the right described in the treaty may not have been impaired, the "liberties" were a concession dependent on the treaty, and as the treaty was abrogated by the war, so also were the "liberties."

CONVENTION OF 1818.

At the third conference held between the American and British plenipotentiaries—Messrs. Gallatin and Rush on the part of the United States, and Messrs. Robinson and Gouldburn on the part of Great Britain—the former presented a proposition in regard to the fisheries in almost the identical language of the 1st article of the convention, afterwards adopted, with the understanding that the liberty of fishing therein described should be considered as a permanent right, and not to be abrogated by the mere fact of a war between the two parties.

At the fifth conference a counter project was submitted by the British plenipotentiaries, not materially differing from the above, except that the renunciatory clause was omitted, and the following paragraph added:

"And in order the more effectually to guard against smuggling, it shall not be lawful for vessels of the United States engaged in the said fishery to have on board any goods, wares or merchandise whatever, except such as may be necessary for the prosecution of the fishery, a support of the fisherman while engaged therein, or in the prosecution of their voyages to and from the said fishing grounds. And any vessel of the United States which shall contravene this regulation may be seized, condemned, and confiscated, together with her cargo."

In regard to this paragraph, and to another referring to fishing at the mouths of rivers, Messrs. Gallatin and Rush presented the following remarks:

"Whatever extent of fishing ground may be secured to American fishermen, the American plenipotentiaries are not prepared to accept it on a tenure, or on conditions different from those on which the whole has been heretofore held. Their instructions did not anticipate that any new terms or restrictions should be annexed, as none were suggested in the proposals made by Mr. Bagot to the American government. The clauses forbidding the spreading of nets, and making vessels liable to confiscation, in case any articles not wanted for carrying on the fishery should be found on board, are of that description, and would expose the fishermen to endless vexations."

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At the seventh conference held on the 13th October, 1818, the British plenipotentiaries submitted a second counter project, conforming with the views and free from the obligations presented by Messrs. Gallatin and Rush, and this project being agreed to constituted the 1st Article of the convention, as follows:

"Whereas differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof to take, dry, and cure fish on certain coasts, bays, harbors and creeks of his Britannic Majesty's dominions in America, it is agreed between the high contracting parties that the inhabitants of said United States shall have forever in common with the subjects of his Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Ramea Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbors and creeks, from Mount Joly, on the southern coast of Labrador, and through the Straits of Belle Isle, and thence northwardly, indefinitely, along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company; and that the American fishermen shall also have liberty forever to dry and cure fish in any of the unsettled bays, harbors, and creeks of the southern part of the coast of Newfoundland, here above described, and of the coast of Labrador. But, so soon as the same or any portion thereof shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at any such portion so settled, without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground; and the United States hereby renounce forever any liberty heretofore enjoyed or cliamed by the inhabitants thereof to take, dry or cure fish, on or within three marine miles of any of the coasts, bays, creeks, or harbors of his Britannic Majesty's dominions in America, not included within the above mentioned limits; Provided, however, That the American fishermen shall be admitted to enter such bays or harbors for the purpose of shelter, and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any manner whatever abusing the privileges hereby reserved to them."

The differences which have heretofore arisen between the United States and Great Britain touching the exercise of the rights and liberties secured to American fishermen, may be classed under two principal heads:

1. As to the construction of the renunciatory clause of the convention.

Under this clause Great Britain has contended that no American fishermen have the right to fish within three marine miles of the entrance to any "bay," which "from its geographical position may be properly considered as included within British possessions," and that the entrance to such bay must be designated by a line drawn from headland to headland. In support of this construction it has been urged that "if the convention was intended to stipulate simply that American fishermen should not take fish within three miles of the coast, there was no occasion for using the word 'bay' at all, but

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the proviso at the end of the article shows that the word 'bay' was used designedly, for it is expressly stated in that proviso that under certain circumstances, the American fishermen can enter bays, by which is evidently meant that they may, under these circumstances pass the sea-line which forms the entrance to the bay.

According to this construction, so undefined and indefinite, the bays of Fundy and Chaleur, or any extent of the sea lying between distant headlands, may be reserved under the name of bay, for the exclusive use of British fishermen.

The United States are firmly opposed to such a construction, believing it to be totally unauthorized by the language or intention of the convention, or by the right acquired by usage. In the opinion of this government repeatedly announced at different periods, the American fishermen have a clear right to the use of the fishing grounds lying off the provincial coasts, whether in the main ocean or in the inland seas, provided they do not approach within three marine miles of such coasts, or of the entrance to any bay, creek or harbor not more than six miles in width; and to such bays only does the renunciatory clause in the first article apply. They object to the British construction on the ground that, if such arms of the sea as the bays of Fundy and Chaleur, or such curves in the coast as the bay of Miramichi, or such part of the sea included between headlands as the wide indentation on the coast of Cape Breton, lying between North Cape and Cape Percy, were the "bays" renounced, there would be an inconsistency, if not a clear contradiction in the very next sentence of the article, which authorizes American fishermen, "to enter such bays for the purpose of shelter and of repairing damages." It can hardly be contended that "shelter" can be obtained in the bay of Fundy, an arm of the sea forty miles wide and one hundred in length, or that either shelter, wood, or water can be obtained, or damages repaired, in the curve of the coast between the headlands of St. Escumenac and Blackland Point, designated on the chart as the bay of Miramichi. It is objected to, also, for the reason that it would permit the drawing of lines anywhere in the gulf or on the coast from headland to headland any one of which could be made to embrace, at one sweep, many bays, creeks, and harbors, besides a portion of the high seas, and from which the American fishermen could be kept an indefinite distance, and be thereby driven from the fishing grounds.

Moreover, it is believed that while the British construction is not necessary to secure to the people of the provinces the in-shore fisheries, or to protect their rights of property, or their territorial jurisdiction, all of which are amply secured by the three marine miles restriction, it would materially restrict the full enjoyment of the right which we possessed before the Revolution, which was acknowledged in the definitive treaty of peace, which was not affected by the treaty of Ghent, and which, according to the decision of Great Britain, expressed in the correspondence which preceded the convention, was not abrogated by the war of 1812. That right is "to take fish" of any kind "in the gulf of St. Lawrence, and at all other places in the sea where the inhabitants of both countries used at any time heretofore to fish." No construction liable to such indefinite extension or application can be correct or be allowed.

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In 1845 her Majesty's government receded from the above position, so far as the bay of Fundy is concerned, and from that date our right of fishery in that bay has not been a matter of dispute. It is now open to American fishermen, to be used in the same manner as the more open sea; provided, however, that they do not take fish within three marine miles of the coasts or of the entrance to any bay, creek, or harbor of Nova Scotia or New Brunswick, between which two provinces that arm of the sea extends.

2. As to the restrictions imposed by the colonies to prevent the privileges of shelter, &c., from being abused by American fishermen.

The fishermen of the United States are frequently compelled by rough weather, or by injuries to their vessels received in a gale, or in consequence of collision or other accident, to seek the nearest port for shelter and repairs. And it is also necessary at stated intervals, while they are engaged during the summer and fall in following their avocation, that they should take on board a resupply of wood and water; and for either of these purposes they have the right, so long as the convention continues in force, to resort to the bays and harbors of the different provinces.

Some of the colonial laws, especially those of Nova Scotia, enacted to prevent the abuse of these privileges, are of such a stringent character as to almost annul the right, or make it at least hazardous for American fishermen to attempt to enjoy it. Seizures are made on the slightest suspicion, or on false pretenses or charges; heavy bonds are required before suit can be instituted to recover; the owner of the vessel must bring the charges, and, if unsuccessful, he is mulcted in treble costs, besides the loss of vessel and cargo.

In this connection it must be borne in mind that a proposition was made to introduce into the convention a stipulation that "it shall not be lawful for the vessels of the United States, engaged in the said fishery, to have on board any goods, wares, or merchandise whatever, except such as may be necessary for the prosecution of the fishery or support or the fishermen," &c., and that this proposed stipulation having been objected to by Messrs. Gallatin and Rush, on the ground that it "would expose our fishermen to endless vexations," it was withdrawn by the British plenipotentiaries.

Such was the condition of the controversy between the United States and Great Britain as to the limits of our right of fishery on the provincial coasts, and such the severe restrictions, amounting almost to prohibition, on the privilege of entering bays and harbors for shelter, wood, or water, previous to 1854, the date of the late reciprocity treaty with Great Britain. That treaty having expired on the 17th of March last, the American fishermen must fall back upon their rights, as thus explained, and as heretofore enjoyed.

I have the honor to be, very respectfully, your obedient servant,

RICHARD D. CUTTS.

Hon. WILLIAM H. SEWARD.
Secretary of State.

[Inclosure No. 2.]

Protocol.

Whereas in the 1st article of the convention between the United States and Great Britain, concluded and signed in London on the 20th of October, 1818, it was declared that "the United States hereby

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renounce forever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbors of his Britannic Majesty's dominions in America not included within certain limits heretofore mentioned;" and whereas differences have arisen in regard to the extent of the above mentioned renunciation, the government of the United States and her Majesty the Queen of Great Britain, being equally desirous of avoiding further misunderstanding, have agreed to appoint, and do hereby authorize the appointment of a mixed commission for the following purposes, namely:

1. To agree upon and define by a series of lines the limits which shall separate the exclusive from the common right of fishing on the coasts and in the seas adjacent of the British North American colonies, in conformity with the 1st article of the convention of 1818; the said lines to be regularly numbered, duly described, and also clearly marked on charts prepared in duplicate for the purpose.

2. To agree upon and establish such regulations as may be necessary and proper to secure to the fishermen of the United States the privilege of entering bays and harbors for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and to agree upon and establish such restrictions as may be necessary to prevent the abuse of the privilege reserved by said convention to the fishermen of the United States.

3. To agree upon and recommend the penalties to be adjudged, and such proceedings and jurisdiction as may be necessary to secure a speedy trial and judgment with as little expense as possible, for the violators of rights and the transgressors of the limits and restrictions which may be hereby adopted:

Provided, however, that the limits, restrictions and regulations which may be agreed upon by the said commission shall not be final, nor have any effect, until so jointly confirmed and declared by the United States and her Majesty the Queen of Great Britain, either by treaty or by laws, mutually acknowledged and accepted by the President of the United States, by and with the consent of the Senate and by her Majesty the Queen of Great Britain.

Pending a definitive arrangement on the subject, the United States government engages to give all proper orders to officers in its employment, and her Britannic Majesty's government engages to instruct the proper colonial or other British officers to abstain from hostile acts against British and United States fishermen respectively.

Mr. Seward to Mr. Adams.

No. 1738.] DEPARTMENT OF STATE,
Washington, April 17, 1866.

SIR: Referring to instructions No. 1737, of the 10th of this month, relative to the fishery question, growing out of the termination of the reciprocity treaty, I now transmit for your information a copy of a report made by this department to the President, in answer to a resolution of the House of Representatives, of the 10th instant, requesting information on the subject.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

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[Inclosure.]

DEPARTMENT OF STATE,
Washington, April 12, 1866.

The Secretary of State to whom was referred a resolution of the House of Representatives of the 10th instant, in the following words: "*Resolved*, That the President of the United States be respectfully requested to inform this House what steps have been taken to protect the rights and interests of American citizens in the fishing grounds adjacent to the British provinces, and whether any legislation or other action, on the part of Congress is, in his judgment necessary to secure these rights and interests in consequence of the abrogation of the reciprocity treaty of 1854," has the honor to report:

That the Secretary of the Navy has, by the President's direction, taken preparatory measures for sending seasonably a naval force to the fishing grounds adjacent to the British North American provinces, which force, it is believed, will be adequate to protect the rights and interests of American citizens against any unlawful violence.

It is proper to state, however, that this department has reason to believe that there are at present no good grounds for apprehending any collision or any necessity for the employment of force.

The attention of the President, and also the attention of her Majesty's government, has been directed to the question, whether negotiation or legislation could be advantageously employed in adjusting the differences which have heretofore existed between the United States and Great Britain concerning the fisheries. The measures taken in that regard are not sufficiently matured to render it expedient or beneficial to suggest any form of special action by Congress at the present time.

Respectfully submitted:

WILLIAM H. SEWARD.

THE PRESIDENT.

Mr. Adams to Mr. Seward.

No. 1194.] LEGATION OF THE UNITED STATES,
London, May 3, 1866.

SIR: Immediately after the reception of your despatch No. 1737, of the 10th of April, I applied to Lord Clarendon for an interview, and obtained one on Tuesday. I then submitted to him the draught of a protocol on the fishery question, premising with some observations as to the probability that he might already have been prepared in a measure for an immediate decision by his information received from Sir Frederick Bruce. His lordship said that such was not the fact—the thing was wholly new to him. On a first glance he rather liked the proposal, but he could not give any opinion without consultation with his colleagues; he must, therefore, take it ad referendum, and would let me know the result at an early day. I then gave him a copy, since which I have had no further intelligence from him. But last evening I casually met with Mr. Cardwell, the head of the Colonial Office, and he at once referred to the matter with great satisfaction; said that he had already himself suggested something of the same kind, and intimated that Lord Clarendon would soon

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communicate to me a favourable answer. This answer may now be in preparation. It is not unlikely that I may get it before the end of the week, when the steamer sails; in which case I shall make to you a further report on the subject.

I have the honor to be, sir, your obedient servant.

CHARLES FRANCIS ADAMS.

Hon. WILLIAM H. SEWARD,
Secretary of State, Washington, D. C.

Mr. Adams to Mr. Seward.

No. 1196.] LEGATION OF THE UNITED STATES,
London, May 10, 1866.

SIR: On my casually meeting with Lord Clarendon at a reception on Saturday evening, I seized the opportunity to remind him that I had not yet heard from him in answer to the proposal furnished through me of your protocol transmitted with your despatch No. 1737, of the 10th ultimo.

His lordship replied by pleading the impossibility of getting anything ready in time for the steamer of that day. This he stated to be in consequence of the multiplied cabinet meetings on the reform measures, intended to be laid before Parliament, and, perhaps, of the duties imposed by the threatening aspect of matters on the continent. His lordship, however, at once communicated to me the substance of the decision of the government, which is to send out authority to Sir Frederick Bruce to proceed in conjunction with you, after consultation with the respective provincial authorities. This had been thought the better course, as the latter had now substantially reached such a position of independence as to make it unadvisable for the government here to attempt to act without regard to them. I understood him to say, what two other members of the cabinet had previously intimated in conversation with me, that they entirely approved of the measure proposed by you.

Inasmuch as Lord Clarendon asked whether I would take this conversation as sufficient official notice, and I agreed to do so, I am bound to believe that I shall get no other. Hence I make the above report.

I have the honor to be, sir, your obedient servant.

CHARLES FRANCIS ADAMS.

Hon. WILLIAM H. SEWARD,
Secretary of State, Washington, D. C.

The Earl of Clarendon to Sir F. Bruce.

FOREIGN OFFICE, *May 11, 1866.*

SIR, Mr. Adams placed in my hands on the 1st instant the paper of which I enclose a copy. The object of it, as you will see, is to provide by mutual agreement between the two Governments for ascer-

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taining the extent of the restrictions imposed, under the 1st Article of the Convention of 1818, upon the fishermen of the United States while carrying on fishing operations on the coasts of Her Majesty's possessions in North America.

Mr. Adams did not accompany the communication of this paper with any explanatory observations in regard to the particular points of settlement of which was contemplated by the United States by means of the proposed agreement, and therefore it can only be inferred that, leaving out of consideration all question of fishing rights on the part of the United States on the coasts of the British possessions to which their fishermen are specially admitted, the object of the proposed Commission is to enquire into and define the several questions relating to rights of exclusive fishery possessed by Great Britain within bays and between headlands which have in former times been a fruitful source of discussion between the two Governments.

These questions were put in abeyance by the Reciprocity Treaty of 1854, but are now revived with all their difficulties by the abrogation of that Treaty at the demand of the Government of the United States.

The definition of the limits of restriction on fishery retained in the Reciprocity Treaty has occupied a Mixed Commission up to the present time, and their labours were only completed when the entire benefit to be derived from them was, in consequence of the abrogation of the Treaty, no longer enjoyable by the fishermen of either country.

It is probable that the Government of the United States, having in view the process by which the fishing provisions of the Reciprocity Treaty were, in one respect, to be carried into effect, contemplate the possibility, by a similar process of determining (though without having recourse to an international arrangement of the same kind—at all events in the first instance) the various questions which for the time were set at rest by the Treaty of 1854.

Her Majesty's Government will very readily associate themselves with that of the United States in such an attempt, and they therefore authorize you to accept, at least in principle, the proposal of a Mixed Commission for the purposes specified in the first, second, and third clauses of the paper delivered to me by Mr. Adams.

But before you sign a Protocol to that effect, Her Majesty's Government desire that you should obtain from the Government of the United States a more distinct explanation of the duties which it is proposed to confide to the Mixed Commission, and of the limits within which it is to operate; though, if that explanation is such as shall satisfy you that you may safely proceed, you may at once sign such a document without further instructions; if, however, you entertain any doubt on the subject, or would prefer, on so important a question, that Her Majesty's Government should have an opportunity of previously signifying their concurrence in the document you may be prepared to sign, you are at liberty to refer home for definitive instructions.

Her Majesty's Government understand that "the southern coast of Newfoundland, which extends from Cape Ray to the Rameau Islands;" "the western and northern coasts of Newfoundland, from the said Cape Ray to the Quirpon Islands;" "the shores of the Magdalen Islands;" "the coasts, bays, harbours, and creeks from Mount Joly,

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on the southern coast of Labrador, to and through the straits of Belle Isle, and thence northwardly, indefinitely, along the coast;" and also "the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland hereabove described, and of the coast of Labrador" will be excluded from the operations of the Commission, whose duty will therefore be confined to ascertaining what is the real extent and meaning of the renunciation, on the part of the United States, "to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions in America not included within the above-mentioned limits;" and, having ascertained these points, then to lay down regulations under which United States' fishermen may be "admitted to enter such bays or harbours for the purpose of shelter and repairing damages therein, of purchasing wood, and of obtaining water;" and to agree upon a system of police for enforcing the conclusions at which the Commission may arrive.

If I have correctly described the object of the United States in the present proposal, Her Majesty's Government will readily accede to it, and will cordially co-operate in removing a source of much irritation between the subjects and citizens of the two countries.

In any case, however, Her Majesty's Government would reserve, as that of the United States are also prepared for themselves to reserve, the right of considering the recommendations of the Joint Commission, before they can finally be held binding on the two Governments; and Her Majesty's Government would hold themselves entitled to maintain, pending the determination of the questions to be discussed, the principle for which they have heretofore contended, and to enforce all regulations and assert all rights which previously to the conclusions of the Reciprocity Treaty, the British Government asserted and enforced. Therefore, if the purport of the concluding paragraph of Mr. Adams' paper is meant by the United States to involve an obligation on the part of Her Majesty's Government to continue to allow, during the sitting of the Commission, fishermen of the United States to enjoy in British waters the privileges under the Reciprocity Treaty which the Government of the United States have now renounced for their citizens, you will frankly state to Mr. Seward that into such an engagement Her Majesty's Government cannot enter.

Her Majesty's Government are most desirous that the rights of the Colonies should be so enforced as to give the least possible occasion for complaint or discussion. They have cordially approved, and have recommended to the Governments of the other British Provinces, a proposal made by the authorities of Canada, that American fishermen should for the present season be allowed to enjoy, under special licenses, the benefits conferred by the Reciprocity Treaty, and they will be glad to learn that the Lower Provinces have adopted an arrangement intended to prevent the change of circumstances from operating suddenly to the injury of the fishing interests of citizens of the United States; but they cannot engage indefinitely to adhere to this system, though they are perfectly prepared to concert with the United States for substituting for it a more permanent arrangement which, either solely applicable to fisheries, or more generally comprising the common interests of Her Majesty's subjects, and those of the citizens of the United States, shall hold out a promise of mutual

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interest to both parties, and the strongest assurance of peace and good-will between the two Governments.

You will, of course, freely communicate with Her Majesty's Colonial authorities on the matters referred to in this despatch.

In the meanwhile, I shall take an opportunity to inform Mr. Adams that, while cordially assenting in principle to the proposal which he placed in my hands, and anxiously desiring that it may lead to a good result, Her Majesty's Government have thought that the negotiation would be facilitated by its being carried on between you and Mr. Seward. I am, etc.

(Signed) CLARENDON.

Mr. Seward to Mr. Adams.

No. 1767.] DEPARTMENT OF STATE,
Washington, May 26, 1866.

SIR: I have to acknowledge the receipt of your despatch of the 10th instant, No. 1196, in which you give me the result of an interview you had recently with Lord Clarendon, upon the subject of the protocol transmitted with instruction No. 1737, from this department.

I am pleased to find that his lordship's observations are indicative of good feeling. I shall be gratified when, as intimated, Sir Frederick Bruce comes to me with his instructions, which I feel assured he will execute in the best manner.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

Mr. Cardwell to Sir W. F. Williams.

No. 31.] DOWNING STREET, *26th May, 1866.*

SIR, I have received your despatch of the 10th inst., No. 37, transmitting a Minute of the Executive Council of Nova Scotia, to whom you referred the copy of my despatch to the Governor General on the subject of the invitation which his Lordship has sent to the Lieutenant Governors of the maritime provinces to unite with Canada in issuing for this season joint licenses to the fishermen of the United States to fish in the inland waters of the respective provinces.

Her Majesty's government learn with great regret the opinion entertained by your government with respect to a policy which her Majesty's government consider extremely calculated to facilitate an arrangement with the United States of a question affecting the foreign relations of this country.

Her Majesty's government trusts that on further consideration, and when the Executive Council are informed that there are reasonable grounds for hoping that before next season permanent arrangements may be made with the government of the United States, they will feel themselves at liberty to withdraw their objections to a temporary arrangement for the year which has received the cordial approval of her majesty's government.

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I must distinctly inform you that on a matter so intimately connected with the international relations of this country, her Majesty's government will not be disposed to *yield their own opinion* of what it is reasonable to insist on, nor to *enforce* the strict rights of her Majesty's subjects beyond what appears to them to be required by the reason and justice of the case.

I have, etc.,

(Signed) EDWARD CARDWELL.

LIEUT. GOVERNOR OF NOVA SCOTIA.

Sir F. Bruce to Mr. Seward.

WASHINGTON, *May 31, 1866.*

SIR: I have the honor to inform you that the government of Canada have authorized P. Fortin, esquire, the magistrate commanding the government vessel *La Canadienne*, employed in protecting the fisheries of Canada, to issue fishery licenses on the payment of the sum of fifty cents per ton of measurement of the vessels proposed to be used in fishing.

These licenses will remain in force during this season, and will confer upon the holders of them, as far as the Canadian fisheries are concerned, all the rights enjoyed by the fishermen of the United States under the reciprocity treaty.

This measure is of a provisional nature, and I trust that before another fishery season arrives an opportunity will be afforded of placing this and other matters affecting the trading relations between the United States and the provinces on a permanent and satisfactory footing.

I have, etc.,

FREDERICK W. A. BRUCE.

Hon. WILLIAM H. SEWARD, &c., &c., &c.

Mr. Seward to Sir F. Bruce.

DEPARTMENT OF STATE,
Washington, June 4, 1866.

SIR: I have the honor to acknowledge the receipt of your note of the 31st ultimo, in which you inform me that the government of Canada have authorized P. Fortin, esq., the magistrate commanding the government vessel *La Canadienne*, employed in protecting the fisheries of Canada, to issue fishery licenses on the payment of fifty cents per ton of measurement of the vessels proposed to be used in fishing, these licenses to remain in force during this season, and to confer upon the holders of them, as far as the Canadian fisheries are concerned, all the rights enjoyed by the fishermen of the United States under the reciprocity treaty, and that this measure is provisional.

In reply, I have the honor to inform you that this provisional arrangement is duly appreciated by this government as evincing an amicable and liberal spirit on the part of the authorities of Canada,

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and that it will be made public, for the information of parties interested in the Canadian fisheries.

Concurring in your friendly wishes for an early and satisfactory adjustment of questions of trade and intercourse between Her Majesty's provinces and the United States, I have the honor to be, with the highest consideration, sir, your obedient servant,

WILLIAM H. SEWARD.

The Hon. Sir FREDERICK W. A. BRUCE, &c., &c., &c.

Sir W. F. Williams to Mr. Cardwell.

HALIFAX, NOVA SCOTIA, *6th June, 1866.*

SIR, In acknowledging the receipt of your despatch No. 31, dated 26th May, 1866, on the subject of fishing licenses to American fishermen during the current year, I have the honor to inform you that although the absence of some of the members of the Executive Council prevents that body from taking immediate action on the subject of your despatch, yet I am to assure you that the wishes of her Majesty's Government shall be complied with, and I shall have the honor of transmitting that assent by the next mail.

I have, etc.,

(Signed) W. F. WILLIAMS.

Mr. Secretary CARDWELL.

Sir F. Bruce to Mr. Seward.

WASHINGTON, *June 24, 1866.*

SIR: I have the honor to state that I am informed by his excellency the governor general of Canada that the governments of Nova Scotia and New Brunswick have agreed that the possession of a license issued by Canada to fish shall entitle the holder, during the season of 1866, to fish in the waters of New Brunswick and Nova Scotia as well as in those of Canada; the holder of a license from the government of Nova Scotia or New Brunswick, if any such shall be issued, being entitled to fish also in the Canadian waters. I shall feel much obliged if you will communicate this information to the chairman of the Committee of Ways and Means.

I have the honor to be, with the highest consideration, sir, your most obedient, humble servant.

FREDERICK W. A. BRUCE.

Hon. WILLIAM. H. SEWARD, &c., &c., &c.

Mr. Seward to Sir F. Bruce.

DEPARTMENT OF STATE,
Washington, June 25, 1866.

SIR: I have the honor to acknowledge the receipt of your note of yesterday, announcing the liberal decision of the governments of Nova Scotia and New Brunswick in regard to fishing licenses granted

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by Canada to fishermen of the United States, and a similar decision of the Canadian government in regard to licenses issued by the governments of Nova Scotia and New Brunswick.

In compliance with your request I shall communicate this information to the Committee of Ways and Means, and I shall also take pleasure in making it known to the public.

I have the honor to be, with the highest consideration, sir, you obedient servant,

WILLIAM H. SEWARD.

The Hon. Sir FREDERICK W. A. BRUCE, &c., &c., &c.

Sir F. Bruce to Mr. Seward.

WASHINGTON, *July 21, 1866.*

SIR: With reference to my note of the 5th instant, and to previous correspondence, I have the honor to inform you that the government of Prince Edward's Island have agreed to recognize in the waters within its jurisdiction the fishing licenses issued by the other British North American provinces.

Fishing licenses are now issued by the government of Prince Edward's Island at the following places and by the under-mentioned persons:

Charlottetown, the colonial secretary; Cascumpeque, James Forsythe; Richmond bay, Benjamin Beansto; Georgetown, William B. Aitkin.

I have the honor to be with the highest consideration, sir, your most obedient, humble servant.

FREDERICK W. A. BRUCE.

Hon. WILLIAM H. SEWARD, &c., &c., &c.

Mr. Fish to Mr. Thornton.

DEPARTMENT OF STATE,
Washington, April 1, 1870.

SIR: Information has reached this Department to the effect that it was announced on behalf of the Canadian minister in the Parliament of the Dominion of Canada, on the 9th ultimo, that it was the intention of the Government to issue no more licenses to foreign fishermen, and that they were taking every step possible to protect their fisheries.

I will thank you for such information as you may be able to communicate concerning any official action having the force of law or valid regulations on the part of the Canadian authorities in the direction above indicated.

I have the honor to be, with the highest consideration.

HAMILTON FISH.

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Mr. Thornton to Mr. Fish.

WASHINGTON, *April 14, 1870.*

SIR: With reference to your note of the 1st instant, I have the honor to inclose copy of a dispatch which I have received from the Governor General of Canada, forwarding a memorandum from Sir John A. Macdonald, together with a copy of the fishery act of May 22, 1868.

EDWARD THORNTON.

[Inclosure No. 1.]

Sir John Young to Mr. Thornton.

OTTAWA, CANADA, *April 11, 1870.*

SIR: With reference to your dispatch of April 2, I have the honor to transmit to you herewith a memorandum from prime minister of the Dominion, together with copies of the fishery acts, (1868,) in order to supply the Secretary of State of the United States with the information he requires.

[Inclosure No. 2.]

DEPARTMENT OF JUSTICE,
Ottawa, April 8, 1870.

SIR: The undersigned has the honor to acknowledge the receipt of a reference to the privy council of a dispatch from her Britannic Majesty's minister at Washington to the Governor General, transmitting copy of a note which the former had received from the Secretary of State of the United States, requesting him to transmit any information he might be able to communicate concerning any official action having force of law or valid regulations on the part of the Canadian authorities, in connection with the announcement recently made that the government of the Dominion intend to issue no more licenses to foreign fishermen, and that they are taking every step possible to protect their fisheries. Upon this dispatch the undersigned has the honor to report that, by an act passed on the 22d May, 1868, (31 Vic., c. 61,) certain provisions were made respecting fishing by foreign vessels in British waters, a copy of which act is hereunto annexed. These provisions are taken very much from enactments previously existing in the late Province of Canada, (Consol. Stat., Canada, c. 62,) in Nova Scotia, (Revised Stat., c. 94,) and in New Brunswick, (Revised Stat., c. 101.)

The undersigned has the honor further to state that his excellency the Governor General in council, on the 8th January last, was pleased to order, "That the system of granting fishing licenses to foreign vessels, under the act 31 Vic., c. 61, be discontinued, and that henceforth all foreign fishermen be prevented from fishing in the waters of Canada. Also, that six suitable sailing vessels, similar to La Canadienne, in addition to the two vessels at present employed, be chartered and equipped for the service of protecting the Canadian in-shore fisheries against illegal encroachments by foreigners; these vessels to be connected with the police force of Canada, and to form a marine branch of the same."[a]

[a] For order in council of January 8, 1870, see p. 157.

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These police vessels will be commanded by competent officers with magisterial powers, will be stationed in Canadian waters with instructions to act with the greatest discretion, and only in cases of clear infringement of the law.

JOHN A. MACDONALD.

[Inclosure No. 3.]

An act respecting fishing by foreign vessels. (Assented to May 22, 1868.)[a]

Mr. Fish to Mr. Thornton.

DEPARTMENT OF STATE,
Washington, April 21, 1870.

SIR: I have the honor to acknowledge the receipt of your note of the 14th instant, inclosing a copy of a dispatch from his excellency the Governor General of the Dominion of Canada, and of the papers which accompanied it. I must invite your attention and that of her Majesty's authorities to the first paragraph of the order in council of the 8th of January last, as quoted in the memorandum of the Prime Minister of the Dominion of Canada, accompanying the dispatch of his excellency the Governor General, which paragraph is in the following language, to wit:

That the system of granting fishing license to foreign vessels, under the act 31 Vic., cap. 61, be discontinued, and that henceforth all foreign fishermen be prevented from fishing in the waters of Canada.

The words underscored seem to contemplate an interference with rights guaranteed to the United States under the first article of the treaty of 1818, which secures to American fishermen the right of fishing in certain waters which are understood to be claimed at present as belonging to Canada.

I have the honor to be, with the highest consideration,

HAMILTON FISH.

Mr. Thornton to Mr. Fish.

WASHINGTON, *April 22, 1870.*

SIR: I have the honor to acknowledge the receipt of your note of yesterday's date, in which you call my attention to the first paragraph of the Canadian order of council of the 8th of January last, relative to the Canadian fisheries. I am forwarding a copy of your note to the Governor-General of Canada; but, in the mean time, I beg you will allow me to express my conviction that there was not the slightest intention, in issuing the above-mentioned order, to abridge citizens of the United States of any of the rights to which they are entitled by the treaty of October 20, 1818, and which are tacitly acknowledged in the Canadian law of May 22, 1868, a copy of which I had the honor to forward to you in my note of the 14th instant.

EDWARD THORNTON.

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[a] For this act, see p. 133.

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Special instructions to Fishery Officers, ex-officio Magistrates, in command of Government vessels engaged as Marine Police in protecting the In-shore Fisheries of Canada.

DEPARTMENT OF MARINE AND FISHERIES,
Ottawa, May 14, 1870.

SIR: The service to which you are appointed is a special and peculiar one; and the exercise on your part of the greatest possible discretion and judgment is required.

The following directions, for your information and guidance, are of a confidential nature.

The duties you will perform, and the powers you shall exercise are defined by the present instructions.

DUTIES.—It will be your duty to cruise at all times, with the vessel under your command on the various "Stations" to which, from time to time, you may be assigned; and to prevent foreign fishermen and fishing vessels from intruding on the inshore fisheries and fishing grounds of Canada, either to take or cure fish, or to procure bait for fishing.

Probably, American fishing vessels and fishermen chiefly will be concerned; therefore it is requisite for you to be more especially informed of the relation of United States citizens to fishery privileges in British waters, as well those of a common and concurrent nature as those of an exclusively Canadian character. Also, to be instructed to what extent, and for what (other than fishing) purposes American fishing vessels and fishermen are permitted free access to the bays and harbors of the Dominion.

The terms of the First Article of the Convention of the 20th October, 1818, between Great Britain and the United States, has, since the expiration of the Reciprocity Treaty governed the participation of American fishermen in the Gulf and Labrador fisheries. A copy of the said article is appended.

1. United States fishermen may exercise the liberty of fishing in common with British subjects along that part of the coast of Canada extending from Mount Joly, near the River Grande Natashquhan, to the easterly limit of Canada, at Blanc Sablon Bay, and around the Magdalen Islands; and enjoy freedom also to land and cure fish on certain of the unsettled shores of the Labrador coast. Wherever any settlement exists within these limits, the privilege of landing and curing fish may be enjoyed by previous agreement with the settlers, or with proprietors of the ground.

2. In all other parts foreigners are precluded from fishing within three marine miles of Canadian shores. American vessels may, however, enter into all bays and harbors for certain specified purposes.

These purposes are—for shelter, repairing damages, purchasing wood, and obtaining water. They are to be admitted for no other purpose whatever. And during such admission they may be subjected to any restrictions necessary to prevent them from taking, drying, or curing fish therein, or in any other manner abusing the privileges thus accorded to them. You will be careful to observe that such qualified admission to the ports and harbors of Canada be not made a pretext or cloak for transferring cargoes, or transacting any other business connected with their fishing operations.

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With regard to the Magdalen Islands, although the liberty to land, and to dry, and to cure fish there, is not expressly given by the terms of the Convention to United States fishermen, it is not at present intended to exclude them; nor is it desirable to impose a narrow construction on the term "unsettled." Places containing a few isolated houses might not, in some instances, be susceptible of being considered as "settled" within the meaning and purpose of the Convention. Something would, however, depend upon the facts of the situation, and the circumstances of the settlement. Private and proprietary rights form an element in the consideration of this point. The generally conciliatory spirit in which it is desirable that you should carry out these instructions, and the desire of Her Majesty's Government that rights of exclusion should not be strained, must influence you in making as fair and liberal an application of the term as shall consist with the just claims of all parties.

Should interference with the pursuits of British fishermen, or the property of Canadians, appear to be inseparable from the exercise of such indulgence, you will withhold it, and insist upon entire exclusion.

Americans, when so admitted, should be made aware that—in addition to being obliged in common with those subjects of Her Majesty with whom they exercise concurrent privileges of fishing in Colonial waters, to obey the laws of the country, and particularly such Acts and regulations as exist to ensure the peaceable and profitable enjoyment of the fisheries by all persons entitled thereto—they are peculiarly bound to observe peace and order in the quasi settled places to which, by the liberal disposition of Canadian authorities, they may be admitted.

Wheresoever foreigners may fish in Canadian waters, you will compel them to observe the Fishery Laws. Particular attention should be directed to the injury which results from cleaning fish on board of their vessels while afloat, and throwing overboard the offals, thus fouling the fishing, feeding and breeding grounds. *The Fisheries Act* (Sec. 14) provides a heavy penalty for this offence.

Take occasion to enquire into and report upon any modes of fishing, or any practices adopted by foreign fishermen which appear to be injurious to the fisheries.

Copies of the Fishery Laws of Canada accompany the present instructions.

Powers.—The capacity in which you are vested with magisterial powers is that of Fishery Officer for the Provinces forming the Dominion of Canada. Your power and authority as a Fishery Officer are derived from the following Statutes: "The Fisheries Act" (31 Vict., cap. 60.)

"An Act respecting Fishing by Foreign Vessels" (31 Vict. cap. 61) and the subsequent Statute, entitled "An Act to amend the Act respecting Fishing by Foreign Vessels" made and passed in the present Session of the Parliament of Canada;

"Chapter 94 of the Revised Statutes (third series) of Nova Scotia" Of the Coast and Deep-sea fisheries);

The Act entitled "An Act to amend cap. 94 of the Revised Statutes of Nova Scotia," (29 Vict., cap. 35.)

An Act passed by the Legislature of the Province of New Brunswick, entitled "An Act relating to the Coast Fisheries, and for the Prevention of Illicit Trade" (16 Vict., cap. 69;)

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Also from such Regulations as have been passed or may be passed by the Governor General in Council, or from Instructions from the Department of Marine and Fisheries, under The Fisheries Act hereinbefore cited.

In such capacity, your jurisdiction must be strictly confined within the limit of "three marine miles of any of the coasts, bays, creeks, or harbors," of Canada, with respect to any action you may take against American fishing vessels and United States citizens engaged in fishing. Where any of the bays, creeks, or harbors shall not exceed ten geographical miles in width, you will consider that the line of demarcation extends from headland to headland, either at the entrance to such bay, creek or harbor, or from and between given points on both sides thereof, at any place nearest the mouth where the shores are less than ten miles apart; and may exclude foreign fishermen and fishing vessels therefrom, or seize if found within three marine miles of the coast.

Should you have occasion to compel any American fishing vessels or fishermen to conform to the requirements of the Fisheries Act and Regulations as regards the modes and incidents of fishing, at those places to which they are admitted under the Convention of 1818,—particularly in relation to ballast, fish offals, setting of nets, and hauling of seines, and use of "trauls," or "bultows," more especially at and around the Magdalen Islands,—your power and authority over such cases will be similar to that of any other Fishery Officer appointed to enforce the Fishery Laws in Canadian waters. (Vide Fisheries Act.)

Certain portions of the foregoing Acts relate to the prevention of illicit trade. Instructions will, therefore, be given you by the Customs Department, authorizing you to act as an Officer of Customs; and it will form part of your duty to see that the Laws and Regulations affecting Revenue, are duly observed. In your capacity of a Customs Officer, you cannot receive any aid from Her Majesty's vessels to enforce authority under the Customs Laws.

JURISDICTION.—The limits within which you will, if necessary exercise the power to exclude United States fishermen, or to detain American fishing vessels or boats, are for the present to be exceptional. Difficulties have arisen in former times with respect to the question, whether the exclusive limits should be measured on lines drawn parallel everywhere to the coast and describing its sinuosities, or on lines produced from headland to headland across the entrances of bays, creeks or harbors. Her Majesty's Government are clearly of opinion, that by the Convention of 1818, the United States have renounced the right of fishing not only within three miles of the Colonial shores, but within three miles of a line drawn across the mouth of any British bay or creek. It is, however, the wish of Her Majesty's Government neither to concede, nor for the present to enforce any rights in this respect, which are in their nature open to any serious question. Until further instructed, therefore, you will not interfere with any American fishermen unless found within three miles of the shore, or within three miles of a line drawn across the mouth of a bay or creek (which is less than ten geographical miles in width.) In case of any other bay, as Bay de Chaleurs, for example, you will not admit any United States fishing vessel or boat, or any American fishermen, inside of a

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line drawn across at that part of such bay where its width does not exceed ten miles.

ACTION.—You will accost every United States vessel or boat actually within three marine miles of the shore, along any other part of the coast except Labrador and around the Magdalen Islands, or within three marine miles of the entrance of any bay, harbor or creek, which is less than ten geographical miles in width, or inside of a line drawn across any part of such bay, harbor or creek, at points nearest to the mouth thereof, not wider apart than ten geographical miles, and if either fishing, preparing to fish, or having obviously fished within the exclusive limits, you will, in accordance with the above recited Acts, seize at once any vessel detected in violating the law, and send or take her into port for condemnation. It must be evident and susceptible of the clearest proof that the offence has been committed, and the capture effected within the prohibited limits.*

Copies of the former and of the latter Acts, are furnished herewith for your use and distribution.

These Acts of Parliament subject to summary seizure and to forfeiture any foreign ship, vessel or boat which is found fishing, or having fished, or preparing to fish within the prohibited limits, and provide for carrying out the seizure and forfeiture.

Compulsory means may be employed; but resort to force will be justified only after every other prudent effort has failed.

DIRECTIONS.—If, from threatened resistance and obvious determination to contest the seizure, and because of the relative inadequacy of your own force, you shall believe any attempt at capture liable to be frustrated, you will warn the parties of the futility of resistance, and that you are authorized to procure the assistance, if needed, of any

* In the instructions issued April 12, 1870 (see Canadian Sessional Papers, No. 81, 1870, p. 15), the section under the heading ACTION reads as follows:

"ACTION.—You will accost every United States' vessel or boat actually within three marine miles of the shore, along any other part of the coast except Labrador, and around Magdalen Islands, or within three marine miles of the entrance of any bay, harbor or creek, which is less than ten geographical miles in width, or inside of a line drawn across any part of such bay, harbor, or creek, at points nearest to the mouth thereof, not wider apart than ten geographical miles, and if either fishing, preparing to fish, or having obviously fished within the exclusive limits, you will, *on the first, and only on one occasion*, inform the owner, master, or person in charge, of the liability of the vessel, or boat, and tackle, to seizure and confiscation, and require him to depart forthwith. Make it known that such preliminary forebearance, in thus allowing him to depart immediately is not because of any claim to notification, but as a mere act of indulgence, which, in the exercise of your discretion, and under your instructions from the Government, you are permitted to extend, according to existing circumstances.

Should such owner, master, or person, in charge of any foreign ship, vessel, or boat, being clearly within prescribed limits, and so found fishing, preparing to fish, or having fished therein, refuse, or neglect to desist and depart forthwith, or should he still continue wilfully, in despite of warning, to fish or hover in Canadian waters, or be again found fishing, preparing to fish, or having fished, or be again found in any actual trespass, abuse of privilege, or evasion of the fishery laws, relating to fishing by foreign vessels, you will instantly seize and detain the ship, vessel, or boat, together with the boats, tackle, rigging, apparel, furniture, goods, stores, and cargo, for an infraction of the Statutes of Canada, respecting Fishing by Foreign Vessels (31 Vict., c. 61), and the subsequent statute amending the same, entitled, "*An Act to amend the Act respecting Fishing by Foreign Vessels*, adopted by the Parliament of Canada at the present Session."

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of Her Majesty's cruisers. In case of need, you must signal for, or otherwise procure the immediate aid of one of Her Majesty's ships, or of some other of the Canadian Government vessels belonging to the Marine Police. With both the first and last mentioned you will co-operate in all things pertaining to the protection of the fisheries.

If a foreign ship, vessel or boat be found violating the Convention, or resisting consequent seizure, and momentarily effects her escape from the vicinity, she remains always liable to seizure and detention, if met by yourself in Canadian waters, and in British waters everywhere if brought to account by Her Majesty's cruisers. But great care must be taken to make certain of the identity of any offending vessel to be so dealt with.

All vessels seized must be placed as soon as convenient in the custody of the nearest Customs Collector; and information, with a statement of the facts, and the depositions of your sailing master, clerk, lieutenant or mate, and of two at least of the most respectable of your crew, be despatched with all possible diligence to the Government. Be careful to describe the exact locality where the unlawful fishing took place, and the ship, vessel, or boat was seized. Also corroborate the bearings taken, by soundings, and by buoying the place (if possible) with a view to actual measurement, and make such incidental reference to conspicuous points and land marks as shall place beyond doubt the illegal position of the seized ship, vessel or boat. Omit no endeavour or precaution to establish on the spot that the trespass was or is being committed within three miles of land.

As it may be possible that any foreign fishing craft has been carried within the headland lines and into Canadian waters, by violent or contrary winds, by strong tides, through misadventure, or any other cause independent of the will of the master and the crew, you will consider these circumstances, and satisfy yourself with regard thereto before taking the extreme step of seizing and detaining any vessel.

On capture it will be desirable to take part of the foreign crew aboard the vessel under your command, and place some of your own crew, as a measure of precaution, on board the seized vessel; first lowering the foreign flag borne at the time of capture.[a] If your ordinary complement of men does not admit of this being done, or if because of several seizures the number of your hands might be too much reduced, you will endeavour to engage a few trustworthy men to supply any such emergency. The portion of foreign crew taken on board the Government vessel, you will land at the nearest place where a Consul of the United States is situated, or where the readiest conveyance to any American Consulate in Canada, or the other British Provinces, may be reached, and leave them there.

When any of Her Majesty's vessels, about the fishing stations, or in port, shall be met with, you should, if circumstances permit, go on board and confer with the Naval Commander, and receive any suggestions he may feel disposed to give, which do not conflict with these instructions, and afford him any information you may possess about the movements of foreign craft, also inform him what vessels you have accosted, and where.

[a] In the instructions issued April 12, 1870, this clause reads as follows, "first substituting a British or Canadian flag for the foreign flag borne at the time of capture."

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Do not fail to make a full entry of all circumstances connected with foreign vessels, noting their names, tonnage, ownership, crew, port, place of fishing, cargo, voyage, and destination, and (if ascertainable) their catch. Report your proceedings, as often as possible and keep the Department fully advised on every opportunity where instructions would most probably reach you at stated intervals.

The service in which you are engaged will be subject to the general direction and control of the chief officer, or master in command, Captain P. A. Scott, R. N., on board the Government steamer *Lady Head* (in the case of the schooners *Stella Maria* and *La Canadienne*, this general control is vested in Napoleon Lavoie, Esq.), whose orders and arrangements you will conform to in every respect. He is advised to consult and to act in conjunction with the British Admiral and Naval Officers commanding Her Majesty's ships.

The precise limits of the station on which you are to cruise, and the further details of your duties, will be described in the directions you will receive as above.

Considerable inconvenience is caused by Canadian fishing vessels, and those belonging to Prince Edward Island, neglecting to show their colors. You will draw the attention of masters to this fact, and request them to hoist their colors without requiring to be hailed and boarded.

It cannot be too strongly impressed upon you, nor too carefully enjoined on the officers and crew under your command, that the present service should be performed in a spirit of forebearance and moderation.

The Government relies on your prudence, discretion, and firmness in the performance of the special duties thus entrusted to you.

I have, etc.,

P. MITCHELL,
Minister of Marine and Fisheries.

Mr. Thornton to Mr. Davis.

WASHINGTON, *May 18, 1870.*

SIR: With reference to the note dated the 21st ultimo, which I had the honor to receive from the Secretary of State, relative to the Canadian order in council of the 8th of January last, discontinuing the system of fishing licenses, I now inclose copy of a dispatch from the Governor General of Canada, forwarding copy of a minute of the privy council of the Dominion, which I trust will be satisfactory to the Secretary of State.

[Inclosure.]

Sir John Young to Mr. Thornton.

OTTAWA, *May 14, 1870.*

SIR: With reference to your dispatch No. 13, of April 22, 1870, I have now the honor to forward herewith a copy of a minute of the privy council of the Dominion, covering a report of the minister of marine on the subject of the order in council of the 8th of January last.

These papers will place you in possession of the views of the Dominion government on the points alluded to in your dispatch.

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[Sub-inclosure 1.]

Report of the committee of the honorable and privy council, approved by his excellency the Governor General, on the 10th day of May, 1870.

The committee of council have had before them the dispatch dated 22d April, 1870, from her Majesty's minister at Washington, inclosing copy of a note which he received from Mr. Fish, in which he invites his attention to the first paragraph of the order in council of the 8th of January last, discontinuing the system of fishing licenses, and stating that Mr. Fish also made a verbal communication to him upon the same subject, and said that the phrase "waters of Canada" might be supposed to include some of those waters in which, by the treaty of 1818, American fishermen have a right to fish, but which, by an extension of the boundaries of Canada, may now be comprised within the "waters of Canada."

Mr. Thornton states that he assured Mr. Fish of his conviction that the above-mentioned order in council has no intention of abridging any of the rights to which citizens of the United States are entitled by the treaty of 1818, and that he would call your excellency's attention to the subject.

The committee have also had under consideration the annexed report, dated 28th April, 1870, from the honorable the minister of marine and fisheries, to whom the above dispatch was referred, and they entirely concur in the views expressed in that report, and advise that a copy thereof be transmitted by your excellency to Mr. Thornton, for the information of the United States Government.

Certified.

WILLIAM H. LEE,
Clerk Privy Council.

[Sub-inclosure 2.]

Report of the Minister of Marine and Fisheries.

DEPARTMENT OF MARINE AND FISHERIES,
Ottawa, April 28, 1870.

The minister of marine and fisheries has the honor to state, with reference to Mr. Thornton's dispatch of the 22d instant, accompanied by a note from Mr. Secretary Fish, in which the latter calls attention to the first paragraph of the order in council of 8th January last, and expresses his apprehension of interference with certain fishing rights guaranteed to the United States by article one of the convention of 1818, that the wording of the minute of council referred to clearly shows, by providing for the prevention of "*illegal* encroachment by foreigners" on the in-shore fisheries of Canada, that the Canadian government never contemplated any interference with rights secured to United States citizens by the treaty in question between the British and American governments.

Mr. Thornton was therefore quite right in assuring Mr. Fish, in general terms, that there could be no intention to abridge any rights to which citizens of the United States are entitled by treaty.

The undersigned remarks that Mr. Fish also labors under a misapprehension in supposing that the present boundaries of the Dominion

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comprise any fishing grounds affected by the existing treaty stipulations to which Mr. Fish's note refers, which were not formerly within the bounds of the old province of Canada. With regard to the general effect of the first paragraph of the order in council of 8th January last, quoted at length, and underlined in Mr. Fish's note, the undersigned would further observe that the act relating to fishing, by foreign vessels, under the authority of which licenses were issued to United States fishermen, applied to all foreigners; and as the discontinuance of the license system which had existed under it applies also to other foreign vessels and fishermen frequenting our coasts, and who are not entitled to fish anywhere in the waters of Canada, the terms of such formal discontinuance were necessarily general, and in any case they could apply only to those waters within which our "in-shore fisheries" are situated, and in which neither American nor other foreign subjects have any legal right to fish.

The whole respectfully submitted.

P. MITCHELL,
Minister of Marine and Fisheries.

Mr. Thornton to Mr. Davis.

WASHINGTON, *May 20, 1870.*

SIR: With reference to my note of the 14th ultimo to the Secretary of State, in which I forwarded to him a copy of the Canadian act respecting fishing by foreign vessels, of the 22d May, 1868, I have now the honor to inclose a further law of the 12th instant, repealing the third section of the above-mentioned act.[a]

Mr. Thornton to Secretary Fish.

WASHINGTON, *May 26, 1870.*

SIR, In compliance with instructions which I have received from the Earl of Clarendon, I have the honor to inclose for the information of the Government of the United States, copies of letters which have been addressed by the Admiralty to Vice Admiral George G. Wellesley, Commanding Her Majesty's Naval Forces on the North America and West Indies Station and of a letter from the Colonial Department to the Foreign Office, from which you will see the nature of the instructions to be given to Her Majesty's and the Canadian officers who will be employed in maintaining order at the Fisheries in the neighbourhood of the Coasts of Canada.

I have the honor to be with the highest consideration, Sir,
Your most obedient humble servant

EDWD. THORNTON.

The Hon. HAMILTON FISH.

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[a] For act of May 12, 1870, see p. 136.

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[Inclosure No. 1.]

Mr. Lushington to Mr. Hammond.

ADMIRALTY, *May 9th, 1870.*

SIR, In reply to your letter of this day requesting that copies of the recent instructions given to Vice Admiral Wellesley for the protection of the Canadian Fisheries may be sent to you for communication to the Government of the United States, I am commanded by My Lords Commissioners of the Admiralty to transmit to you a copy of a letter addressed to the Vice Admiral on the 9th of April (of which you were informed by letter of the same date) and of a letter addressed to him on the 5th instant on a representation from the Secretary of State for the colonies.

My Lords request that you will lay the same before the Earl of Clarendon.

I am, &c., (Sig^d) VERNON LUSHINGTON.

Right Honorable EDMUND HAMMOND, &c. &c. &c.,
Foreign Office.

[Sub-inclosure 1.]

Mr. Wolley to Vice Admiral Wellesley.

ADMIRALTY, *April 9th, 1870.*

SIR, I am commanded by My Lords Commissioners of the Admiralty to transmit for your information and guidance the enclosed copies of Foreign Office letters dated 2nd, 7th, and 9th Instant, referring to the resolution of the House of Representatives at Washington in regard to the intention of the Government of the Dominion of Canada to suspend the licenses to foreign vessels for the inshore Fisheries on the coasts of the Dominion.

My Lords desire that you will detach a sufficient force to Canadian Waters to protect Canadian Fishermen, and to maintain order, and you are to instruct the Senior officer of such force to cooperate cordially with any United States force sent on the same service.

I am, &c.

(Sigd.) THOMAS WOLLEY.

P. S. The following telegram has been sent this day to H. B. M's. Consul at New York: "Please to communicate the following instructions to the Senior Naval Officers at Halifax and Bermuda by first opportunity:

'Admiral Wellesley to make preparations at once for sending vessels to protect Canadian fisheries in concert with United States Naval authorities. Instructions sent to Halifax by to-day's post'".

Vice Admiral WELLESLEY, C. B. &c., &c., &c.,
Halifax.

[Sub-inclosure 2.]

Mr. Wolley to Vice Admiral Wellesley.

ADMIRALTY, *May 5, 1870.*

SIR, With reference to my letter of the 9th April last in regard to the protection of Canadian Fisheries: I am commanded by my Lords Comm^{rs} of the Admiralty to transmit to you, for your infor-

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mation and guidance, the inclosed copy of a letter from the Under Secretary of State for the Colonies dated 30th ulto. relative to the recent determination to increase the stringency of the existing practice by dispensing with the warnings hitherto given and seizing at once any vessel detected in violating the law.

My Lords desire me to remind you of the extreme importance of commanding officers of the ships selected to protect the fisheries, exercising the utmost discretion in carrying out their instructions, paying special attention to Lord Granville's observation that no vessel should be seized unless it is evident and can be clearly proved that the offence of fishing has been committed and that the vessel is captured within three miles of land.

I am, &c.,

(Signed) THOMAS WOLLEY.

V. Admiral WELLESLEY, C. B. &c &c &c

[Inclosure No. 2.]

Mr. Rogers to the Secretary of the Admiralty.

DOWNING STREET, *April 30, 1870.*

SIR, In Mr. Secretary Cardwell's letter to the Lords Commissioners of the Admiralty of the 12th of April 1866 it was stated that American vessels should not be seized for violating the Canadian fishing Laws "except after wilful and persevering neglect of the warn-"ings which they may have received; and in case it should become "necessary to proceed to forfeiture, cases should, if possible, be "selected for that extreme step in which the offence of fishing has "been committed within three miles of land."

The Canadian Govt. has recently determined with the concurrence of H. M. Ministers to increase the stringency of the existing practice by dispensing with the warnings hitherto given and seizing at once any vessel detected in violating the law.

In view of this change and of the questions to which it may give rise, I am directed by Lord Granville to request that you will move their Lordships to instruct the officers of Her Majesty's ships employed in the protection of the Fisheries that they are not to seize any vessel unless it is evident and can be clearly proved that the offence of fishing has been committed, and the vessel itself is captured, within three miles of land.

I am, &c.,

(Signed) F. ROGERS.

The SECRETARY THE ADMIRALTY.

[Inclosure No. 3.]

Mr. Holland to the Under Secretary of State.

COLONIAL OFFICE *May 13th, 1870.*

SIR, I am directed by Earl Granville to acknowledge the receipt of your letter of the 9th Instant, requesting to be furnished, for communication to the Government of the United States with copies of the instructions issued to the commanders of the Canadian vessels engaged in the protection of the fisheries.

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Lord Granville desires me to state, for the information of Lord Clarendon, that the Governor General of the Dominion has been requested by telegraph to forward to this office any instructions already issued on this subject, or that may be issued in consequence of Lord Granville's despatch to the Governor General, of which a copy is enclosed.

I am, &c,

(Sigd.) H. HOLLAND.

The UNDERSECRETARY OF STATE,
Foreign Office.

[Sub-inclosure.]

Lord Granville to Sir John Young.

COLONIAL OFFICE *April 30th, 1870.*

SIR, I have the honor to transmit to you the copy of a letter which I have caused to be addressed to the Admiralty respecting the instructions to be given to the officers of H. M's. Ships employed in the protection of the Canadian Fisheries.

H. M's. Government do not doubt that your Minister will agree with them as to the propriety of these instructions, and will give corresponding instructions to the vessels employed by them.

I have, &c.

(Sigd.) GRANVILLE.

H. E. The Rt. Honble. Sir JOHN YOUNG, Bart.
&c &c &c

Mr. Fish to Mr. Thornton.

DEPARTMENT OF STATE,
Washington May 31, 1870.

SIR: I have the honor to acknowledge your note of 18th instant, addressed to Mr. Davis, inclosing a dispatch from the Governor General of Canada, forwarding copy of a "minute of the privy council," and also a report of the minister of marine and fisheries, dated 28th April last. The reiteration in this respect of the assurance, which you had previously given, that there could be no intention on the part of the Dominion of Canada to abridge any rights to which the citizens of the United States are entitled by treaty, is in accordance with the confident expectation of this Government.

It had, however, attracted the notice of the Government that, by an order in council of 8th January last, it was ordered that "henceforth all foreign fishermen be prevented from fishing in the waters of Canada." The question arose, What are the waters of Canada?

At the date of the treaty of 1818 the boundary of Canada, as understood, was defined by the 27 chap. 49 George III., entitled "An act for establishing courts of jurisdiction in the island of Newfoundland and the islands adjacent, and for reannexing part of the coast of Laborador and the islands lying on said coast to the government of Newfoundland," (March 30, 1809,) by the 14th section of which it was enacted "that such parts of the coast of Labrador from the river Saint John to Hudson's Streights, and the said island of Anticosti, and all other smaller islands so annexed to the government of Newfoundland by the

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said proclamation of the seventh day of October, one thousand seven hundred and sixty-three (except the said islands of Madelaine,) shall be separated from the said government of Lower Canada, and be again re-annexed to the government of Newfoundland."

The mouth of the river Saint John, referred to in this act, is understood to be between the 64th and 65th meridian of longitude west from Greenwich.

We further understood that in June, 1825, by the 9th section of cap. 59, 6 Geo. IV., entitled "An act to provide for the extinction of federal and seigniorial rights and burthens in lands held *a titre de tief* and *a titre de cens*, in the province of Lower Canada, and for the gradual conversion of those tenures into the tenure of free and common socage, and for other purposes relating to said province," it was enacted that so much of the said coast as lies to the westward of a line to be drawn due north and south from the bay or harbor of Ance Sablon, inclusive, as far as the 52d degree of north latitude, with the island of Anticosti, and all other islands adjacent to such part as last aforesaid of the coast of Labrador, shall be, and the same are hereby, reannexed to and made a part of the said province of Lower Canada, and shall henceforward be subject to the laws of the said province, and to none other.

The bay or harbor of Ance Sablon is understood to be in the longitude of about 57° 8′, at or near the entrance of the Straits of Bello Isle.

The treaty of 1818 secures to the inhabitants of the United States, in common with the subjects of her Britannic Majesty, the liberty to take fish of any kind on the shores of the Magdalen Islands, and also on the coasts, bays, harbors, and creeks from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belle Isle, and thence northwardly, &c.

Mount Joly, thus fixed by treaty as the westernmost limit on the coast of Labrador of the liberty of fishing for the inhabitants of the United States, is understood to be in the longitude of about 61° 40′. From that point eastward and northward, on the shores of what was then called Labrador, the fishermen of the United States have the liberty to take fish.

The act last above recited seems to establish the boundaries and the jurisdiction of Canada as extending to the bay of Ance Sablon, about four and a half degrees of longitude to the east of Mount Joly, and to include the Magdalen Islands.

It was under the impression that this act establishes the jurisdiction and the boundary of Canada, as extending to a line drawn due north and south from the bay or harbor of Ance Sablon, and including the Magdalen Islands, that on the 21st of April last I invited your attention to the first paragraph of the order in council of the Dominion of Canada on the 8th January last, declaring "that henceforth all foreign fishermen be prevented from fishing in the waters of Canada," as contemplating a possible interference with the rights guaranteed to the United States under the treaty of 1818. The minister of the privy council and the report of the minister of marine and fisheries, of which you have given me copies, give assurance of the intent of the authorities of the Dominion government not to abridge those rights; but the order in council may be interpreted by those to whom its execution is intrusted to authorize their

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interference with fishermen of the United States while in the exercise of their guaranteed liberty. If our understanding that the boundary and jurisdiction of Canada extend to the bay or harbor of Ance Sablon, and include the Magdalen Islands, be correct, "the waters of Canada" embrace the coast of Labrador from Mount Joly to the Bay of Ance Sablon, and include also the Magdalen Islands. Desirous to avoid the possibility of any misapprehension on the part of those who may be charged with the execution of the order in council, I beg to call your attention to the acts to which I have referred, and to request, in case I am in error with regard to the eastern boundary and the extent of jurisdiction in Canada, that you will advise me of the real boundary and jurisdiction. If I am correct in this respect, and if that part of the coast of what in 1818 was known as Labrador included between Mount Joly and the bay or harbor of Ance Sablon, or the Magdalen Islands, be in "the waters of Canada," I do not doubt that the authorities of the Dominion will recognize the necessity of such modification of the order in council of the 6th of January last, or of such additional instructions to be given as will secure the fishermen of the United States from interference while in the exercise of the liberty guaranteed to them by the treaty of 1818.

I have the honor to be, with the highest consideration,

HAMILTON FISH.

Report of Canadian Minister of Marine and Fisheries with reference to special instructions of May 14, 1870.

DEPARTMENT OF MARINE AND FISHERIES,
Ottawa, 31st May, 1870.

Having reference to a despatch of the 30th ultimo, from the Secretary of State for the Colonies, covering a communication of the same date from Sir Frederick Rogers to the Secretary of the Admiralty, directing attention to instructions given to the Officers of Her Majesty's ships employed in the protection of the fisheries of Canada, and desiring the Canadian Government to give corresponding directions to Officers in command of the Marine Police vessels similarly engaged, the undersigned has the honor to submit that in certain respects Lord Granville's wish has been already provided for in the Special Instructions adopted by the Governor General in Council, on the 14th instant.

The Officers of Her Majesty's ships, are, it is said, instructed "not to seize any vessel unless it is evident, and can be clearly proved, that the offence of fishing has been committed, and the vessel itself is captured within three miles of land."

Attention is respectfully requested to a division of the instructions issued by the Government of Canada, headed "Action," by which it will be seen that exercise of the lawful power of peremptory and absolute detention is not contemplated on the first occasion, unless there be a wilful and persistent violation of the law; but such preliminary forebearance could not possibly be extended to any subsequent act of trespass.

Another division of these instructions, headed "Directions," provides with great care against the possibility of any offending vessel being seized by the Canadian Officers, except actually within three

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miles of land, and unless the commission of the offence can be clearly proved. It is, however, intimated under the same head, that any offending vessel which may resist or avoid immediate seizure within three miles of land, remains liable to capture, for the offence committed, by Canadian officers in the waters of Canada, and by Imperial cruisers, wherever she may be found in British waters. And, in consequence, the Canadian Officers are directed to communicate without delay the names of any vessels they shall have notified and accosted, or any which may escape or resist seizures. This proviso is consonant to the Acts relative to fishing by foreign vessels, as besides the offence of being "found fishing" it is unlawful to "have been, fishing, &c." Vide 31, Vic., cap. 61, sec. 1, and amending Act.

The undersigned begs to express the hope that the instructions suggested in Lord Granville's despatch to the Admiralty, may not be interpreted so as to affect such liability.

It is also understood that the terms "offence of fishing has been committed" occurring in the Admiralty instructions to which the assent of the Canadian Government is invited, are to be construed conformably with the fishery laws, as under these statutes, preparing to fish inshore constitutes an offence.

The undersigned would respectfully observe, that while recommending acquiescence in so much of His Lordship's suggestion as consists with these Special Instructions, it is advisable to guard against any further practical modification of the strict right of entire exclusion, and also of summary action, than what has been already provided for in the very considerate instructions issued by the Canadian Government. There should, as far as it is possible, be uniformity of procedure in these particulars between Her Majesty's ships and the subsidiary force employed by Canada.

With reference, however, to that part of Lord Granville's suggestion affecting the order to capture any foreign vessel liable to seizure, only when the ship is actually within three miles of the coast, the undersigned considers it open to serious objections.

Both the Imperial and Colonial statutes regulating fishing by foreign vessels relate to jurisdiction "in British waters." The system applied under them recognizes certain conventional limits as the basis of actual exclusion. But it would seem to be inconsistent, both with the provisions of those acts, and the object of defence, to admit of offending vessels avoiding all penal consequences of their trespass by simply passing an imaginary line out of Colonial bounds, and yet being still within British jurisdiction, after having violated the provincial laws, and infringed the treaty between Great Britain and the United States, and also the Imperial Act founded on the same. The peculiar facility with which foreign vessels may cross and re-cross along this marine limit, renders it possible that, under shelter of the exemption resulting from any instruction of the nature suggested, trespassers may present the anomaly of escaping from the Marine Police of Canada, to the quasi-protection of Imperial authority. The existence of such a rule must really invite illegal encroachments on the part of foreigners, and the immediate effect will be to encourage intruders to quicken their efforts to avoid detection and evade seizure, knowing that the capture of their vessels is certain only when caught, as it were, in the very act of trespass. It will certainly weaken the moral influence of any demand made by the officers in command of the Canadian vessels, depending, as they are instructed

to do, on the material aid of Her Majesty's ships in case of violence, they being themselves unauthorized to fire upon and disable any vessel either offering resistance or endeavouring to escape seizure.

There is also to be considered the probable future reference to this exception in connection with any final settlement of the reserved question of headland lines. If, for instance any foreign vessel having actually trespassed within three miles of the shore of the interior of the Bay de Chaleurs, and escaped from the municipal force of Canada, shall not be afterwards subject to seizure under British authority anywhere within the entrance to that bay, say inside of a line drawn across from Miscou to Point Maquereau (distant apart about fifteen miles), and where in all other matters, of a civil or criminal nature, Canada exercises provincial jurisdiction; it may simply waiver (sic) of both Canadian and British control, quo ad exclusive rights of fishery. The Government having deliberated on and determined to maintain this essential point by several Orders in Council adopted since 1864, it is unadvisable to sanction any such dubious proceedings as might be in future pressed into service to support American views. Occasion is taken to refer to reports from this Department, dated 15th and 20th December last, in which this disputed part of the fishery question is referred to at length, and other previous reports enumerated; and the undersigned begs leave again to urge that Her Majesty's Government may be requested to bring it to a speedy settlement in the manner proposed by Lord Clarendon in 1866, on the suggestion of the American Ministers at London.

The undersigned would respectfully, but most earnestly represent the tendency of any restriction of the kind proposed by Lord Granville, on the support of Her Majesty's squadron, to mar the efficiency of this important service, and begs leave to recommend that Her Majesty's Government may be asked to instruct the Commanding Officer to receive and act upon whatever definite and reliable reports (with satisfactory particulars) of actual detection or escape, may be made by the Officers in command of the Canadian Government vessels employed in protecting the in-shore fisheries of Canada.

The whole, nevertheless, respectfully submitted.

(Signed) P. MITCHELL.
Minister of Marine and Fisheries.

Mr. Thornton to Mr. Fish.

WASHINGTON, *June 2, 1870.*

SIR: I have the honor to acknowledge the receipt of your note of the 31st ultimo relative to the exception which you took to the wording of the Canadian order in council of the 8th of January last, relative to the fisheries in the neighborhood of Canada.

I am inclined to think that you are right in supposing that the limit of Canada extends as far east as Ance Sablon on the coast of Labrador, and that the Magdalen Islands are comprised within it, for I am not aware that any change has been made since the act of Parliament of 1825, quoted in your note.

I have, however, transmitted a copy of your note to the Governor General of Canada, and shall not fail to acquaint you with the nature of his answer.

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Mr. Thornton to Mr. Fish.

WASHINGTON, *June 3, 1870.*

SIR: In compliance with instructions which I have received from the Earl of Clarendon, I have the honor to transmit for your information copy of a letter addressed by the Admiralty to the Foreign Office inclosing copy of one received from Vice Admiral Wellesly commanding Her Majesty's naval forces on this Station, in which he states the names of the vessels to be employed in maintaining order at the Canadian Fisheries and forwarding a copy of the instructions which were to be issued to the commanders of those vessels.

I have the honor to be with the highest consideration, Sir,

Your most obedient humble servant

EDWD. THORNTON.

The Hon. HAMILTON FISH.

[Inclosure No. 1.]

Mr. Lushington to Mr. Hammond.

ADMIRALTY, *May 19th, 1870.*

SIR: I am commanded by my Lords Commissioners of the Admiralty to transmit, for the information of the Earl of Clarendon, a copy of a letter from Vice Admiral Wellesley, dated April 27th, No. 151, stating that the *Plover Royalist* and *Britomart* are about to be despatched to the Bay of Fundy, and the Coasts of Nova Scotia and Prince Edward's Island for the protection of the Canadian Fisheries.

Enclosed is a copy of the special instructions furnished to these ships as stated in Vice Admiral Wellesley's letter, in addition to Instructions similar to those which were issued last year for the guidance of H. M's. officers employed on this service.

I am, &c.,

(Sigd.) VERNON LUSHINGTON.

The Rt. Honble. EDMUND HAMMOND, &c., &c., &c.

[Inclosure No. 2.]

Vice Admiral Wellesley to the Admiralty.

"ROYAL ALFRED" *At Bermuda, April 27th, 1870.*

SIR, You will be pleased to inform the Lords Commissioners of the Admiralty, with reference to your letter of the 9th instant, that the "*Plover*" will leave Bermuda tomorrow for St. John, New Brunswick, to protect the Canadian Fishermen, and to maintain order in the Bay of Fundy, and that the "*Royalist*," "*Philomel*" and "*Britomart*" will leave in a few days to occupy the different stations on the coasts of Nova Scotia and Prince Edwards Island.

I enclose a copy of the instructions which will be given to the "*Plover*" and with which all the other ships to be employed on simi'ar duty will be supplied.

I have, &c.,

(Sigd.) GEORGE G. WELLESLEY,
Vice Admiral.

The SECRETARY TO THE ADMIRALTY.

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[Inclosure No. 8.]

Instructions of Vice Admiral Wellesley to commanding officers of fisheries protection vessels.

By Geo. Greville Wellesley Esq^re^ Companion, of the most Honorable Order of the Bath, Vice Admiral in Her Majesty's Fleet, and Commander-in-Chief of Her Majesty's Ships and Vessel employed, and to be employed, on the North American and West Indian Station.

To The respective Captains, Commanders and Commanding Officers Of H. M. Ships employed in the protection of the Fisheries.

It being my intention to employ H. M. Ship under your command in the protection of Fisheries, the following instructions are furnished for your guidance in conducting that important duty, and they comprise what is necessary for your employment on any of the Stations to which you may be detached for that purpose.

1.

The mode in which it is the decision of Her Majesty's Government that the United States fishermen are to be dealt with, is clearly set forth in the annexed letter (A) from the Colonial Secretary to the Lords Commissioners of the Admirality, dated 12th April, 1866. In the margin of this letter are noted explanations for your guidance, which have received their Lordships sanction.

2.

The several Stations with their limits you will find described in the Appendix (B).

3.

Your first duty on arriving on your Station will be to acquaint yourself by personal inquiry amongst the Fishermen and others on the spot, with such information in regard to the Fisheries as will enable you with the experience you will have gained at the end of the season, to make a full report on this staple of Colonial commerce, and of the best means to be adopted in the ensuing year for its effectual protection.

4.

You are to make yourself thoroughly acquainted with the Coasts and the various Ports and anchorages where you will be able to seek shelter in bad or thick weather, so that you will experience no difficulty under such circumstances in making out the land when you close it.

5.

A letter from the Lords Commissioners of the Admiralty on the subject of Pilotage is annexed (C) by which you are to be guided. To your report (Art. 3) is to be added one from your Navigating Officer relative to the Navigation and Pilotage of your Station.

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6.

You will regulate your cruising according to the information you may obtain from time to time giving your principal attention to that part of your Station on which you find the United States fishermen are chiefly engaged, and unless detained by stress of weather you are not to remain in harbour more than 48 hours at one time. During the night, where strong currents prevail and during fogs, it will be well to anchor whenever the weather, depth of water, and other circumstances permit, using your steam for the purpose in deep water.

7.

In reference to the second paragraph of marginal note G. in the annexed letter (A), the Lords Commissioners of the Admiralty have decided that one previous warning will be sufficient before seizing any vessel fishing in violation of the law. (See also Article 1.)

On board any Foreign fishing vessel for the purpose of warning her, the boarding officer will inform the master, in the presence of a competent witness, that if he is again found fishing or having fished within the prescribed limits, he will be subject to seizure.

8.

You will keep a list of all vessels boarded in the following form, and you will take every opportunity of furnishing lists of the Foreign vessels which you may have warned to H. M. Ships and the Colonial Cruisers, in order that the law may not be evaded.

Boarded.		Name.					If warned.		*Remarks.*
Date.	Where.	Vessel.	Under what color.	Owner.	Master.	Port belonging to.	Date.	Under what circumstances.	If master had been previously warned, to be so stated.

You are to cruise as much as possible under sail, but you are to keep your fires banked in order that you may be prepared to use steam whenever the service renders it requisite that you should do so.

9.

You will keep me fully informed of your intended movements in order that I may be able to communicate with you should I desire to do so, and on arriving at each place of call you will send to the Telegraph Office, to ascertain if there are any orders for you there.

10.

Your proceedings are to be reported weekly for my information, accompanied by your Log and Track Chart for the week. In every

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case of seizure a special report of the circumstances attending it, is to be made to me forthwith.

Should no opportunity be presented of forwarding the Report at the expiration of the week, it is to be sealed and transmitted by the first opportunity which may occur subsequently. These reports are to be numbered consecutively as Fishing Report No. 1, 2, &c., and if in harbor the week's Log is to be accompanied by a blank report duly numbered.

They are to include a Return of all Fishing Vessels boarded, since the date of the last return, on the same form as that given in Art. 8.

11.

Such Papers as are requisite for your information and guidance, arranged under the heads of the several Provinces, are added.

Such of these papers as do not apply to the Station on which you are employed, will prove useful as giving you a general knowledge of this special service, and prepare you to act on any other Station where I may find it necessary to employ you.

12.

You will omit no precaution in your power to prevent collisions between the Subjects of Her Majesty and those of the United States who may be brought into contact with each other in prosecuting the Fisheries in those places which during the period the Reciprocity Treaty was in force were common to both Nations.

13.

These instructions are to be carried out in a spirit of conciliation, force being only resorted to after every other effort has failed, and you are at all times to use the utmost temper and forbearance, compatible with the duty entrusted to you.

14.

You are to remain on this service until recalled but you will report specially to me when you consider your presence no longer required on your Station.

Given under my hand on board the ---------- ----------
at ---------- the ---------- day of ---------- 18

[Annex to foregoing instructions.]

APPENDIX A.

[A.]

CONFIDENTIAL—NORTH AMERICAN FISHERIES—LETTER RESPECTING INSTRUCTIONS TO BE SENT TO THE ADMIRAL ON THE NORTH AMERICAN STATION, WITH REFERENCE TO THE DETERMINATION OF THE RECIPROCITY TREATY—COLONIAL OFFICER, APRIL 12, 1866.

The Secretary of State for the Colonies to the Lords of the Admiralty.

DOWNING STREET, *April 12th, 1866.*

MY LORDS, The determination of the Reciprocity Treaty contracted in 1854 between Great Britain and the United States revives the 1st

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Article of a Convention of the 20th of October 1818, with various Imperial and Colonial Acts enumerated in the margin of which the operation had been suspended during the continuance of the Treaty by the Imperial Act 18 & 19 Vict., cap. 3, sec. 1, or otherwise.[a]

The precise provisions of that Article will be seen by reference to the Convention. Its general result is as follows:

1. American fishermen may fish, "in common with the subjects of Her Britannic Majesty," in certain specified parts of Newfoundland and Labrador, and on the shores of the Magdalen Islands, with liberty to dry and cure fish on the shores of certain of the unsettled—or with the consent of the inhabitants of the settled bays, harbours, and creeks of Newfoundland and Labrador.

2. Except within the above limits American fishermen are not to take, dry or cure fish on or within three miles of the coasts, bays, creeks, and harbours of British North America. But they may enter such bays and harbours for certain specified purposes under such restrictions as may be necessary to prevent abuse by fishing or otherwise. [See Note *a*.]

I. With regard to Newfoundland and Labrador, the Convention does but continue within certain geographical limits, and subject to a qualification in respect to the curing of fish, the privileges which have hitherto been exercised under the Reciprocity Treaty. It does not, therefore, call for much observation. It is only requisite to say that although the privilege of drying and curing fish on the Magdalene Islands is not expressly given to American fishermen, Her Majesty's Government have no desire at present to exclude them from it, nor to impose any narrow construction on the word "unsettled." A bay containing a few isolated houses is not to be considered as "settled," for the purpose of this clause of the Convention.

On the other hand, naval officers should be aware that Americans who exercise their right of fishing in Colonial waters in common with subjects of Her Majesty, are also bound in common with those subjects, to obey the law of the country, including such Colonial laws as have been passed to insure the peaceable and profitable enjoyment of the fisheries by all persons entitled thereto.

The enforcement of the Colonial laws must be left, as far as the exercise of rights on shore is concerned, to the Colonial authorities, by whom Her Majesty's Government desire they shall be enforced with great forbearance, especially during the present season. In all cases they must be enforced with much forbearance and consideration, and they must not be enforced at all by Imperial officers if they appear calculated to place the Americans at a disadvantage in comparison with British fishermen in waters which, by the Treaty of 1818, are opened to vessels of the United States. On the contrary, their unequal operation should, in this case, be reported to their Lordships, a copy of

[a] The laws and order in council enumerated below, inclosed with Appendix A, may be found at the pages indicated:
1. Convention of Oct. 20, 1818, page 24.
2. 59 George III, Cap. 38 (Imperial Act), page 112.
3. Nova Scotia Act, Rev. Stats. chap. 94, page 123.
4. New Brunswick Act, 16 Vict. Cap. 69, page 126.
5. Prince Edward's Island Act, 6 Vict. Cap. 14, page 128.
6. Order in Council, (Imperial) Sept. 3, 1844, page 182.

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the report [see Note A] being at the same time sent to the Governor of the Colony.

II. Fuller explanation is necessary respecting that part of the Convention by which the United States renounce the right of fishing, except within the permitted limits—"on or within three miles of any of the coasts, bays, creeks, or harbours of British North America, and are forbidden to enter such bays, or harbours, except for certain defined purposes.

The Act of Parliament (59 Geo. III., Cap. 38), already mentioned subjects to forfeiture any foreign vessel which is found fishing, or having fished, or preparing to fish, within the prohibited limits, and authorizes the enforcement of this forfeiture by the like means and in the same Courts as may be resorted to under any act of Parliament in the case of any offence against the laws relating to Customs, or the laws of trade and navigation. [See Note B.]

The statutory mode of enforcing the law against Customs' offences committed in the Colonies will be found in the Act 16 & 17 Vict., Cap. 107, and particularly in the 2nd, 183rd, 186th and 223rd clauses. But as it would probably be held under this Act that a vessel could only be seized safely by a naval officer "duly employed for the prevention of smuggling" (section 233), it will be probably more convenient for naval officers to take advantage of the procedure authorized by the 103rd clause of the Merchant Shipping Act, which is a law relating to "trade and navigation." [See Note C.]

Under that clause (of which a copy is annexed) any commissioned officer on full pay in the military or naval service of Her Majesty may seize any ship subject to forfeiture, and bring her for adjudication before any Court having Admiralty jurisdiction in Her Majesty's dominions. [See Note D.]

It will probably be advisable, as a general rule, that officers of the navy should proceed against vessels engaged in unlawful fishing under the Act of Geo. III., and the Merchant Shipping Act, which extends to all the closed waters of British North America, and do not require the officer's authority to be fortified by any Colonial commission or appointment. But more extended powers are conferred by the above-mentioned local Acts of Nova Scotia, New Brunswick, and Prince Edward Island, on persons commissioned by the Lieutenant-Governors of these Colonies, and any officer who is permanently charged with the protection of the fisheries in the waters of any of these Colonies, may find it useful to obtain such a commission. [See Note E.]

It will invest him with a special authority in the waters of the Colony to which it relates, to bring into port any foreign vessel which continues within these waters for twenty-four hours after notice to quit them, and, in case she shall have been engaged in fishing, to prosecute her to condemnation. It will also enable him to prosecute the forfeiture of his vessel, if it shall be found to have prohibited goods on board. But this power it would be undesirable to exercise, as Her Majesty's Government do not at present desire officers of the navy to concern themselves with the prevention of smuggling. [See Note F.]

These being the powers legally exercisable by officers of Her Majesty's Navy, it follows to consider within what limits and under what conditions they should be exercised.

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Her Majesty's Government are clearly of opinion, that by the Convention of 1818, the United States have renounced the right of fishing, not only within three miles of the Colonial Shores, but within three miles of a line drawn across the mouth of any British bay or creek. But the question what is a British bay or creek is one that has been the occasion of difficulty in former times.

It is, therefore, at present the wish of Her Majesty's Government neither to concede, nor, for the present, to enforce, any rights in this respect which are in their nature open to any serious question. Even before the conclusion of the Reciprocity Treaty, Her Majesty's Government had consented to forego the exercise of its strict right to exclude American fishermen from the Bay of Fundy; and they are of opinion that during the present season that right should not be exercised in the body of the Bay of Fundy, and that American fishermen should not be interfered with either by notice or otherwise, unless they are found within three miles of the shore or within three miles of a line drawn across the mouth of a bay or creek which is less than ten geographical miles in width, in conformity with the arrangement made with France in 1839. American vessels found within these limits should be warned that by engaging or preparing to engage in fishing they will be liable to forfeiture, and should receive the notice to depart which is contemplated by the laws of Nova Scotia, New Brunswick, and Prince Edward Island, if within the waters of one of these colonies under circumstances of suspicion. But they should not be carried into port except after wilful and persevering neglect of warnings which they may have received; and in case is should become necessary to proceed to forfeiture, cases should, if possible, be selected for that extreme step in which the offence of fishing has been committed within three miles of land. [See Note G.]

Her Majesty's Government do not desire that the prohibition to enter British bays should be generally insisted on, except when there is reason to apprehend some substantial invasion of British rights. [See Note H.]

And in particular, they do not desire American vessels to be prevented from navigating the Gut of Canso (from which Her Majesty's Government are advised they may be lawfully excluded;) unless it shall appear that this permission is used to the injury of Colonial fishermen, or for other improper objects.

I have it in command to make this communication to your Lordships as conveying the decision of Her Majesty's Government on this subject.

I have, &c.

(Signed) EDWARD CARDWELL

[MARGINAL NOTES ON FOREGOING LETTER.]

[*a*] (American Fishermen provided with Licenses are not subject to this prohibition. See additional instructions.)

A. The Report here directed is to be forwarded to me in triplicate for transmission to the Lords Commissioners of the Admiralty.

B. In all cases in which inconvenience would arise from the Clause in the Colonial Acts which prescribes the delivery of the Vessel seized, "to the Officer of the Colonial Revenue next to the place where seized," prosecute under this Act.

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C. When prosecuting as above directed, avail yourself of the procedure authorized by the 103rd Clause of the Merchant Shipping Act.

An extract of a letter from the Under Secretary of State for the Colonies descriptive of the mode in which the combination of these two Acts is rendered effective for the purposes of prosecution is given herewith. See Extract from Colonial Office letter of 23rd June, 1866.

D. This will enable you to send the Vessel for adjudication to any Admiralty Court, and consequently to that situated in the Port *most convenient* to you, i. e. a Vessel seized in Nova Scotian waters could be sent to Charlotte Town, Prince Edward Island for condemnation, and so of all the other Provinces respectively.

E. You may prosecute under the Colonial Acts when it will not be inconvenient to you, to adhere strictly to the Clause directing the delivery of the Vessel seized to the Revenue Officer *next to the place* where seized, but in no other case.

F. You will observe that the Colonial Acts prescribe the delivery of Vessels which are seized "to the Officers of the Colonial Revenue *next to the place* where seized", and further prescribe the Court in which the forfeiture shall be prosecuted.

In all cases in which delay would ensue from delivering the Vessel over as above directed, you are to send the Vessel direct to the Port where the Court exists, in which the Vessel seized is to be prosecuted, and there to deliver her over to the Revenue Officers.

G. You are to make every proper allowance for mistakes which may have arisen in the position of the Fishing Vessels from thick weather or other sufficient causes, confining yourself in such cases to warning them off.

You are to give every Vessel warning only on one separate occasion of finding her in the act of fishing within the prohibited limits, after which, should you find the same Vessel committing a trespass for the second time, and are satisfied that the neglect of your warning is wilful and persevering, you are to seize her and send her into Port for condemnation.

In all such cases, you are to be careful that the Vessel seized is within three miles of the land, her position being determined by bearings taken in such a mode as will admit of their accuracy being sworn to in Court by three competent witnesses; and you are to have the same amount of evidence of the commission of the offence, whether that be of having fished, of fishing, or of preparing to fish, observing as regards this last offence, the evidence must be very conclusive to ensure condemnation.

In the event of making a seizure, you are, when practicable, to tow the Vessel into Port, being careful in all cases to remove her Crew, with the exception of the Master, observing that when in tow her Colours are not to be hoisted. Should you not take the Vessel into Port yourself, her Crew are to be landed at the nearest Port where there is an American Consul.

H. By "substantial invasion of British rights" you are to understand such proceedings as are detrimental to the British fishermen in the prosecution of their calling. Any case of this description is to be reported to me, in order to its being dealt with as I may direct,

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and the same course is to be pursued in regard to the Navigation of the Gut of Canso, should you observe it to be injurious to the Colonial fishermen, or otherwise detrimental to British interests.

APPENDIX B.

STATIONS.

No. I. Coast of New Brunswick—Bay of Fundy.

1. Limits. From three miles south of the S. W. Head of the Grand Manan, round the shores of that island, and from Owen Head on the south, to Cape Spencer on the north to the coast of New Brunswick, including the offlying Islands.

2. Headquarters. St. John, New Brunswick, where coal is to be completed as requisite, and such other supplies are to be purchased as can be procured.

3. Remarks. The Mackerel, which strike the coast of America at Cape Cod about the middle of May, are said to run not higher up the Bay of Fundy than the northern end of the Grand Manan.

Should this prove to be the case, the cruising ground will be confined to the vicinity of that Island and Campo-Bello.

No. II. Coast of Nova Scotia—Bay of Fundy.

1. Limits. From Cape Sable on the south, to the entrance of the Chignecto channel, as shown by a line drawn from Squally Point on the coast of Nova Scotia, to Wolfe River on that of New Brunswick.

2. Headquarters. Digby, but coal is to be completed at St. John, New Brunswick, and such other supplies procured as cannot be obtained at Digby.

3. Remarks. The Cod and Halibut Fishery, which commences on this coast early in the year, is resorted to by the Americans, from Bryer Island to Digby Gut, between the first of April and the 30th of June, and the Mackerel which appear on the coast towards the end of May, rarely run higher up the Bay than Digby.

Should this prove to be the case, the cruising ground will be in the main confined to the coast between Digby Gut and Cape Sable.

No. III. East coast of Cape Breton.

1. Limits. From Cape Canso, including the Bay of Chedabucto, to Cape North, being divided into three Sections.

I. From Cape Canso, including Chedabucto Bay, to Scatare Island.

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II. From Scatare Island to Cape Dauphin.
III. From Cape Dauphin to Cape North.

2. Headquarters. Sidney, where coal is to be completed, and such other supplies are to be purchased as can be obtained and cannot be procured at the out-ports.

3. Remarks. From Cape Canso to Scatare Island, including Chedabucto Bay, the Fishery though good is said not to be much resorted to by the Americans.

The Mackerel strike this coast at periods varying from the 15th of June to the 15th of July, and the Fishery lasts till November, probably as late as the weather will permit.

No. IV. West Coast of Cape Breton.

1. Limits. From Cape North to Arisaig on the coast of Nova Scotia, including George Bay, thence across to Cape Bear and along the coast of Prince Edward Island to East Point, being divided into two Sections.

I. The coast of Cape Breton north to Port Hood.
II. The remainder of the Station.

2. Headquarters. Port Hood, but coal is to be completed at Pictou and such other supplies are to be obtained there, as cannot be procured at Port Hood.

3. Remarks. Refer to those of the sixth Station.

No. V. North coast of Prince Edward Island.

1. Limits. From East Point to North Point.

2. Headquarters. George Town, in Cardigan Bay, there being no Harbour on the north coast fit for the purpose. Coal is to be completed at Pictou, and such other supplies obtained there as cannot be procured at George Town.

3. Remarks. Refer to those of the sixth Station.

No. VI. Coast of New Brunswick—Gulf of St. Lawrence.

1. Limits. From North Point, Prince Edward Island, to Cape Wolfe, thence across to Richibucto Head, and along the coast of New Brunswick, round Point Birch, and the Bay of Chaleurs to Cape Rozier.

2. Headquarters. Pictou, (there being no Harbour on this coast fit for the purpose), where coal is to be completed and such provisions procured as cannot be obtained at the out-ports.

3. Remarks. The Fishery on this and the two preceding Stations is of the best description, observing that in Northumberland Strait, within the limits across it assigned to the fourth and sixth Stations, there is no Fishery.

It is said to commence at the end of June, but till the beginning of August to be conducted off-shore on the edge of the Bank, and round the Magdalen Islands, after which the in-shore Fishery commences, and lasts till November, or as long as the weather will permit.

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There is no Fishery in the Gut of Canso, but it has been resorted by the Americans for the purpose of transferring their cargoes.

The Fish in the Gulf of St. Lawrence being caught chiefly in the fall of the year, are fat and of a finer description than those caught earlier in the year, which are lean.

APPENDIX C.

In reference to Article 5 of the Fishery Instructions.

PILOTAGE.

[Copy.]

No. 584. M M] Admiralty, *7th. December, 1868.*

Sir, I am commanded by my Lords Commissioners of the Admiralty to acquaint you that it appears that H. M. S. *Cadmus*, Captain Gordon, when engaged in the protection of the Fisheries on the Coast of Cape Breton, took on board a local Pilot at Sydney on the 19th of July, 1867, and then made a trip round the Island by the North and West Coasts, through the Gut of Canso to the East Coast, and back to Sydney on the 9th August, after calling at various places on the way.

Although the Pilot was on board at the daily rate of 10s. the highest allowed on the Station for general service, Captain Gordon granted certificates to the Navigating Officer, contrary to the custom of the service, for taking the Ship into and out of all the harbours that were visited, including Sydney, and also for the Gut of Canso; stating in reply to a letter from the Hydrographer of the Admiralty that "the Pilot was borne for the purpose of recognizing the coast during foggy weather, by the express Orders of the Commander-in-Chief, as contained in Fishery Instructions issued by him, and was not in any way employed, or even qualified to pilot the Ship into or out of the several Ports."

Although in the Fishery Instructions issued by Sir James Hope in 1866, the chief use of the permanent Pilot is stated to be for the purpose of making out the land in foggy weather, to give information as to the set and strength of the tides, and the approach of bad weather, my Lords do not apprehend that this was intended to be the only use of the permanent Pilot, who is engaged as a rule at a daily rate, for general service, (i. e. for the coast and principal harbors) and that other local Pilots, or the Navigating Officer, should be paid for all the Ports and Anchorages; thus involving much additional expense.

Permanent Pilots are allowed on the Station solely on account of the fogs, and they have always been expected to be competent for the principal harbors, many of which are easy of access; and as the Pilot (James Muggale) in the *Cadmus* did not even take her out of his own harbor, of Sydney, nor through the Gut of Canso, with the assistance of Steam; and as the Ship was at anchor more than half the time he was on board, his services could not be of much, if of any value, and no Pilot who is so incompetent should be employed at all, as the payment of Pilotage to two Persons, the Pilot and the Navigating Officer, for the same period, is contrary to the Regulations, and the presence of a bad Pilot only acts as a bar to the claim of the Navigating Officer.

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As many of the Pilots are merely Fishermen, accustomed to small Vessels, and are often found incapable of handling large Ships of War, and as, with the facilities afforded by Steam, Her Majesty's Ships are more independent of these men than in former times, my Lords, with the view of encouraging the Navigating Officers to take pilot charge, while cruising for the protection of the Fisheries, will, for the future, sanction the payment of an allowance at the rate of 5s. a day for every day their Ships are under way within the limits undermentioned, viz:

All the waters to the Northward of an imaginary line from Cape Canso, Nova Scotia, to St. Pierre on the coast of Newfoundland, comprising the Gut of Canso, Northumberland Strait, Gulf and River St. Lawrence to Bic, and the Strait of Belle Isle.

The East coast of Labrador and Newfoundland when running into and out of the bays and harbours and when cruising not more than three leagues from the mainland or from the outlying Islands and dangers.

The Bay of Fundy inside an imaginary line drawn from Mount Desert Rock on the West to Seal Island Light on the East.

The Pilotage Certificate should show in a tabular form the dates and places or the latitude and longitude between which the Ship was employed, and the total number of days she was under way.

The allowance is only to be paid, provided no Pilots have been employed on the coasts, or at those places for which the Chart is a sufficient guide.

I am, &c.

(Signed) HENRY G. LENNOX.

Vice Admiral Sir RODNEY MUNDY
West Indies.

[Inclosure No. 4.]

Additional instructions of Vice Admiral Wellesley for officers employed in the protection of the Canadian fisheries for the season of 1870.

CONFIDENTIAL.

The Lords Commissioners of the Admiralty have informed me that it is probable that a force of U. S. Vessels of War will be sent to the Canadian Fishing Grounds this season to watch over the interests of American vessels, and I have therefore to impress on you the great importance which is attached by their Lordships to a cordial understanding being maintained between the officers commanding the cruisers of both countries, and you will consider it your duty to co-operate frankly and cordially with the U. S. Officers in order to prevent if possible any misunderstanding or chance of collision between the American and English Fishermen.

2. The Canadian Govt. have refused to continue the system formerly adopted of granting Licenses to Foreigners for the in-shore Fisheries, and have expressed their intention to employ Colonial Cruisers to act as a Police Force in the prevention of any encroachments.

(Sgd) G. G. WELLESLEY,
V. Admiral.

H. M. S. ROYAL ALFRED,
At Bermuda, 27 April, 1870.

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Mr. Fish to Mr. Thornton.

DEPARTMENT OF STATE,
Washington, 4th June, 1870.

SIR: I have the honor to acknowledge the receipt of your communication of the 26th ultimo, enclosing a copy of letters which have been addressed by the Admiralty to Vice-Admiral Wellesley and other papers relating to the instructions to be given to Her Majesty's and the Canadian officers who will be employed in maintaining order at the Fisheries near the Coasts of Canada.

I am happy to find in the considerate terms in which those instructions are expressed, evidences of a disposition to respect fully the rights of the United States under the Convention of 1818.

I have, etc.

HAMILTON FISH.

EDWARD THORNTON, Esq^re. C. B., &c.

Lord Granville to Sir John Young.

[Telegram.]

RECEIVED IN OTTAWA, *June 6th, 1870.*

Her Majesty's Government hope that the United States fishermen will not be for the present prevented from fishing except within three miles of land or in bays which are less than six miles broad at the mouth.

(Signed,) GRANVILLE.

Mr. Fish to Mr. Thornton.

DEPARTMENT OF STATE,
Washington, June 8, 1870.

SIR: I have the honor to acknowledge the receipt of your note of the 3d instant, and of the papers accompanying it, giving the names of the British vessels to be employed in maintaining order at the Canadian fisheries, and the instructions proposed to be issued by Vice-Admiral Wellesley to the commanders of those vessels.

I beg leave to point out to you and to her Majesty's government an apprehended discrepancy between the terms of the instructions thus communicated and those which were given by the admiralty to the vice admiral, a copy of which, dated the 5th ultimo, accompanied your note of the 26th ultimo, and which direct that "no vessel should be seized, (meaning fishing vessels of the United States,) unless it is evident and can be clearly proved that the offense of fishing has been committed and that the vessel is captured within three miles of land.

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On the other hand, I find with the instructions issued by Vice Admiral Wellesley, and forming a part of them, a letter marked *confidential*, from the secretary of state for the colonies to the lords of the admiralty, dated Downing Street, April 12, 1866, in which is expressed the opinion of her Majesty's government, that the United States have renounced the right of fishing within three miles of a line drawn across the mouth of any British bay or creek, and also that American fishermen should not be interfered with, either by notice or otherwise, unless they are found within three miles of a line drawn across the mouth of a bay or creek which is less than ten geographical miles in width, in conformity with the arrangement made with France in 1839, and that American vessels found within these limits should be warned that by engaging or preparing to engage in fishing they will be liable to forfeiture, and should receive notice to depart.

The vice-admiral communicated a copy of these instructions, which he proposed to issue immediately to the commander of the *Plover*, to the secretary of the admiralty on the 27th of April last; and though it is not doubted that on receipt of the later instruction addressed to him on the 5th ultimo, by the lords commissioners of the admiralty, he will modify the directions to his subordinates so that they will be in conformity with the views of the admiralty, and without entering into any consideration of questions which might be suggested by the letter referred to, which I understand to be superseded by later instructions, I think it best to call your attention to the inconsistencies referred to, in order to guard against misunderstandings and complications that might arise in the absence of modifications of the instructions communicated in your note of the 3d instant.

HAMILTON FISH.

Mr. Thornton to Mr. Fish.

WASHINGTON, *June 11, 1870.*

SIR, I had the honour to receive yesterday your note of the 8th instant relative to an apparent discrepancy between the instructions issued by Vice Admiral Wellesley inclosed in my note of the 3rd instant and those given by the Admiralty to him, which accompanied my note of the 26th ultimo. You are however quite right in not doubting that Admiral Wellesley, on the receipt of the later instructions addressed to him on the 5th ultimo will have modified the directions to the officers under his command so that they may be in conformity with the views of the Admiralty. In confirmation of this I have since received a letter from Vice Admiral Wellesley dated the 30th ultimo informing me that he had received instructions to the effect that officers of Her Majesty's Ships employed in the protection of the Fisheries should not seize any vessel unless it were evident and could be clearly proved that the offence of fishing had been committed and the vessel itself captured within three miles of land.

I avail myself at the same time of the opportunity to point out to you, in compliance with an instruction which I have received from the Earl of Clarendon, that the Circular of the 16th ultimo of your

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honourable Colleague, The Secretary of the Treasury respecting the Canadian inshore fisheries, may lead to future misunderstanding inasmuch as it limits the maritime jurisdiction of the Dominion of Canada to three marine miles from the shores thereof without regard to international usage which extends such jurisdiction over creeks and bays, or to the stipulations of the Treaty of 1818, in which the United States renounce the right of fishing within three miles, not of the coast only, but of the bays, creeks, or harbours of Her Britannic Majesty's Dominions in America.

I have, etc.,

EDWD. THORNTON.

The Hon. HAMILTON FISH.

Special Instructions to Fishery Officers, ex officio Magistrates, in command of Government Vessels engaged as Marine Police, in protecting the In-shore Fisheries of Canada.

DEPARTMENT OF MARINE AND FISHERIES,
Fisheries Branch, Ottawa, June 27, 1870.

SIR: The service to which you are appointed is a special and peculiar one: and the exercise on your part of the greatest possible discretion and judgment is required.

The following directions, for your information and guidance, are of a confidential nature.

The Duties you will perform, and the Powers you shall exercise, are defined by the present instructions.

DUTIES.—It will be your duty to cruise, at all times, with the vessel under your command on the various "Stations" to which, from time to time, you may be assigned; and to prevent foreign fishermen and fishing vessels from intruding on the in-shore fisheries and fishing grounds of Canada, either to take or cure fish, or to procure bait for fishing.

Probably, American fishing vessels and fishermen chiefly will be concerned. Therefore, it is requisite for you to be more especially informed of the relation of the United States citizens to fishery privileges in British waters, as well those of a common and concurrent nature as those of an exclusively Canadian character. Also, to be instructed to what extent, and for what (other than fishing) purposes American fishing vessels and fishermen are permitted free access to the bays and harbors of the Dominion.

The terms of the First Article of the Convention of the 20th October, 1818, between Great Britain and the United States, has, since the expiration of the Reciprocity Treaty, governed the participation of American fishermen in the Gulf and Labrador fisheries. A copy of the said Article is appended.

1. The United States fishermen may exercise the liberty of fishing in common with British subjects along that part of the coast of Canada extending from Mount Joly, near the River Grande Natashquhan, to the easterly limit of Canada, at Blanc Sablon Bay, and around the Magdalen Islands; and enjoy freedom also to land, and cure fish on certain of the unsettled shores of the Labrador coast. Wherever any settlement exists within these limits, the privilege of

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landing and curing fish may be enjoyed by previous agreement with the settlers, or with proprietors of the ground.

2. In all other parts foreigners are precluded from fishing within three marine miles of Canadian shores. American vessels may, however, enter into all bays and harbors for certain specified purposes.

These purposes are:—for shelter, repairing damages, purchasing wood, and obtaining water. They are to be admitted for no other purpose whatever. And during such admission they may be subjected to any restrictions necessary to prevent them from taking, drying, or curing fish therein, or in any other manner abusing the privileges thus accorded to them. You will be careful to observe that such qualified admission to the ports and harbors of Canada, be not made a pretext or cloak for transferring cargoes, or transacting any other business connected with their fishing operations.

With regard to the Magdalen Islands, although the liberty to land and to dry, and cure fish there, is not expressly given by the terms of the Convention to United States fishermen, it is not at present intended to exclude them; nor is it desirable to impose a narrow construction on the term "unsettled." Places containing a few isolated houses might not, in some instances, be susceptible of being considered as "settled" within the meaning and purpose of the Convention. Something would, however, depend upon the facts of the situation, and the circumstances of the settlement. Private and proprietary rights form an element in the consideration of this point. The generally conciliatory spirit in which it is desirable that you should carry out these instructions, and the desire of Her Majesty's Government that rights of exclusion should not be strained, must influence you in making as fair and liberal an application of the term as shall consist with the just claims of all parties.

Should interference with the pursuits of British fishermen, or the property of Canadians, appear to be inseparable from the exercise of such indulgence, you will withhold it, and insist upon entire exclusion.

Americans, when so admitted, should be made aware that, in addition to being obliged in common with those subjects of Her Majesty with whom they exercise concurrent privileges of fishing in Colonial waters, to obey the laws of the country, and particularly such acts and regulations as exist to ensure the peaceable and profitable enjoyment of the fisheries by all persons entitled thereto, they are peculiarly bound to observe peace and order in the quasi settled places to which, by the liberal disposition of Canadian authorities, they may be admitted.

Wheresoever foreigners may fish in Canadian waters, you will compel them to observe the Fishery Laws. Particular attention should be directed to the injury which results from cleaning fish on board of their vessels while afloat, and throwing overboard the offals, thus fouling the fishing, feeding, and breeding grounds. The Fisheries Act (sect. 14) provides a heavy penalty for this offence.

Take occasion to enquire into and report upon any modes of fishing, or any practices adopted by foreign fishermen, which appear to be injurious to the fisheries.

Copies of the Fishery Laws of Canada accompany the present instructions.

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POWERS.—The capacity in which you are vested with magisterial powers is that of Fishery Officer for the Provinces forming the Dominion of Canada. Your power and authority as a Fishery Officer are derived from the following Statutes: "The Fisheries Act" (31 Vict., cap. 60);

"An Act respecting Fishing by Foreign Vessels" (31 Vict., cap. 61), and the subsequent statute, entitled "An Act to amend the Act respecting Fishing by Foreign Vessels," made and passed in the present Session of the Parliament of Canada;

"Chapter 94 of the Revised Statutes (third series) of Nova Scotia" (of the Coast and Deep Sea Fisheries);

The Act entitled "An Act to amend Cap. 94 of the Revised Statutes of Nova Scotia" (29 Vict., cap. 35);

An Act passed by the Legislature of the Province of New Brunswick, entitled "An Act relating to the Coast Fisheries, and for the Prevention of Illicit Trade (16 Vict., cap. 69);

Also from such Regulations as have been passed or may be passed by the Governor General in Council, or from instructions from the Department of Marine and Fisheries under "The Fisheries Act," hereinbefore cited.

In such capacity, your jurisdiction must be strictly confided within the limit of "three marine miles of any of the coasts, bays, creeks, or harbors," of Canada, with respect to any action you may take against American fishing vessels and United States citizens engaged in fishing. Where any of the bays, creeks, or harbors, shall not exceed six geographical miles in width, you will consider that the line of demarcation extends from headland to headland, either at the entrance to such bay, creek, or harbor, or from and between given points on both sides thereof, at any place nearest the mouth where the shores are less than six miles apart; and may exclude foreign fishermen and fishing vessels therefrom, or seize if found within three marine miles of the coast.

Should you have occasion to compel any American fishing vessels or fishermen to conform to the requirements of the "Fisheries Act and Regulations," as regards the modes and incidents of fishing, at those places to which they are admitted under the Convention of 1818, particularly in relation to ballast, fish offals, setting of nets, and hauling of seines, and use of "trawls," or "bultows," more especially at and around the Magdalen Islands, your power and authority over such cases will be similar to that of any other Fishery Officer appointed to enforce the Fishery Laws in Canadian waters. (Vide "Fisheries Act.")

Certain portions of the foregoing Acts relate to the prevention of illicit trade. Instructions will, therefore, be given you by the Customs Department, authorizing you to act as an Officer of Customs; and it will form part of your duty to see that the Laws and Regulations affecting Revenue, are duly observed. In your capacity of a Customs Officer, you can not receive any aid from Her Majesty's vessels to enforce authority under the Customs Laws.

JURISDICTION.—The limits within which you will, if necessary exercise the power to exclude United States fishermen, or to detain American fishing vessels or boats, are for the present to be exceptional. Difficulties have arisen in former times with respect to the question, whether the exclusive limits should be measured on lines drawn parallel everywhere to the coast and describing its sinuosities,

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or on lines produced from headland to headland across the entrances of bays, creeks, or harbors. Her Majesty's Government are clearly of opinion, that by the convention of 1818, the United States have renounced the right of fishing not only within three miles of the Colonial shores, but within three miles of a line drawn across the mouth of any British bay or creek. It is, however, the wish of Her Majesty's Government neither to concede, nor for the present to enforce any rights in this respect which are in their nature open to any serious question. Until further instructed, therefore, you will not interfere with any American fishermen unless found within three miles of the shore, or within three miles of a line drawn across the mouth of a bay or creek which, though in parts more than six miles wide, is less than six geographical miles in width at its mouth. In the case of any other bay, as Bay des Chaleurs, for example, you will not interfere with any United States fishing vessel or boat, or any American fishermen, unless they are found within three miles of the shore.

ACTION.—You will accost every United States vessel or boat actually within three marine miles of the shore, along any other part of the coast except Labrador, and around the Magdalen Islands, or within three marine miles of the entrance of any bay, harbor, or creek, which is less than six geographical miles in width, or inside of a line drawn across any bay, harbor, or creek at points nearest to the mouth thereof, not wider apart than six geographical miles, and if either fishing, preparing to fish, or having obviously fished within the exclusive limits, you will, in accordance with the above recited Acts, seize at once any vessel detected in violating the law, and send or take her into port for condemnation; but you are not to do so *unless it is evident, and can be clearly proved, that the offence of fishing has been committed*, and that the vessel is captured within the prohibited limits.

Copies of the former and of the latter Acts are furnished herewith for your use and distribution.

These Acts of Parliament subject to summary seizure and to forfeiture any foreign ship, vessel, or boat, which is found fishing, or having fished, or preparing to fish, within the prohibited limits, and provide for carrying out the seizure and forfeiture.

Compulsory means may be employed; but resort to force will be justified only after every other prudent effort has failed.

DIRECTIONS.—If, from threatened resistance and obvious determination to contest the seizure, and because of the relative inadequacy of your own force, you shall believe any attempt at capture liable to be frustrated, you will warn the parties of the futility of resistance, and that you are authorized to procure the assistance, if needed, of any of Her Majesty's cruisers. In case of need, you must signal for, or otherwise procure the immediate aid of one of Her Majesty's ships, or of some other of the Canadian Government vessels belonging to the Marine Police. With both the first, and last mentioned you will co-operate in all things pertaining to the protection of the fisheries.

If a foreign ship, vessel, or boat be found violating the Convention, or resisting consequent seizure, and momentarily effects her escape from the vicinity, she remains always liable to seizure and detention, if met by yourself in Canadian waters, and in British waters everywhere if brought to account by Her Majesty's cruisers. But great

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care must be taken to make certain of the identity of any offending vessel to be so dealt with.

All vessels seized must be placed as soon as convenient in the custody of the nearest Customs Collector; and information, with a statement of the facts, and the depositions of your sailing master, clerk, lieutenant, or mate, and of two at least of the most respectable of your crew, be despatched with all possible diligence to the Government. Be careful to describe the exact locality where the unlawful fishing took place, and the ship, vessel, or boat, was seized. Also, corroborate the bearings taken, by soundings, and by buoying the place (if possible) with a view to actual measurement, and make such incidental reference to conspicuous points and land marks as shall place beyond doubt the illegal position of the seized ship, vessel, or boat. Omit no endeavour or precaution to establish on the spot that the trespass was or is being committed within three miles of land.

As it may be possible that any foreign fishing craft has been carried within the headland lines and into Canadian waters, by violent or contrary winds, by strong tides, through misadventure, or any other cause independent of the will of the master and the crew, you will consider these circumstances, and satisfy yourself with regard thereto before taking the extreme step of seizing and detaining any vessel.

On capture it will be desirable to take part of the foreign crew aboard the vessel under your command, and place some of your own crew, as a measure of precaution, on board the seized vessel; first lowering the foreign flag borne at the time of capture. If your ordinary complement of men does not admit of this being done, or if because of several seizures the number of your hands might be too much reduced, you will endeavor to engage a few trustworthy men to supply any such emergency. The portion of foreign crew taken on board the Government vessel, you will land at the nearest place where a Consul of the United States is situated, or where the readiest conveyance to any American Consulate in Canada, or the other British Provinces, may be reached, and leave them there.

When any of Her Majesty's vessels, about the fishing stations, or in port shall be met with, you should, if circumstances permit, go on board and confer with the naval commander, and receive any suggestions he may feel disposed to give, which do not conflict with these instructions, and afford him any information you may possess about the movements of foreign craft, also inform him what vessels you have accosted, and where.

Do not fail to make a full entry of all circumstances connected with foreign vessels, noting their names, tonnage, ownership, crew, port, place of fishing, cargo, voyage, and destination, and (if ascertainable) their catch. Report your proceeding as often as possible, and keep the Department fully advised on every opportunity where instructions would most probably reach you at stated intervals.

The service in which you are engaged will be subject to the general direction and control of the chief officer, or master in command, Captain P. A. Scott, R. N., on board the Government steamer *Lady Head*, (in the case of the schooners *Stella Maria* and *La Canadienne*, this general control is vested in Napoleon Lavoie, Esq.) whose orders and arrangements you will conform to in every respect. He is advised to consult and to act in conjunction with the British Admiral and Naval Officers commanding Her Majesty's ships.

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The precise limits of the station on which you are to cruise, and the further details of your duties, will be described in the directions you will receive as above.

Considerable inconvenience is caused by Canadian fishing vessels, and those belonging on Prince Edward Island, neglecting to show their colors. You will draw the attention of masters to this fact, and request them to hoist their colors without requiring to be hailed and boarded.

It cannot be too strongly impressed upon you, nor too carefully enjoined on the officers and crew under your command, that the present service should be performed in a spirit of forbearance and moderation.

The Government relies on your prudence, discretion, and firmness in the performance of the special duties thus entrusted to you.

I have the honor to be, Sir,

Your obedient servant,

P. MITCHELL,
Minister of Marine and Fisheries.

Mr. Fish to Mr. Thornton.

DEPARTMENT OF STATE,
Washington, June 30, 1870.

SIR: I have the honor to acknowledge the receipt of your note of the 11th instant, in which you confirm my impression that Admiral Wellesley will have modified the directions to the officers under his command engaged in the protection of the Canadian fisheries, so that they shall be in conformity with the views of the admiralty, and in which you point out, under instructions from the lamented Earl of Clarendon, that the circular of the 16th ultimo, issued by the Secretary of the Treasury of the United States, respecting the Canadian in-shore fisheries, may lead to further misunderstanding, inasmuch as it limits the maritime jurisdiction of the Dominion of Canada to three marine miles from the shores thereof.

In view of the claims heretofore presented by her Majesty's government and which, as it contends, are supported by the law of nations and the stipulations of the treaty of 1818, as to the extent of British maritime jurisdiction in the waters in which the fisheries are prosecuted on the eastern coast of North America, the President is pleased to recognize in the tenor of the dispatches and instructions which have been addressed by her Majesty's government to the Canadian authorities and to Admiral Wellesley a generous spirit of amity, which is reciprocated by the United States. Animated by that spirit, he directs that her Majesty's government be informed that the description of the limit of Canadian maritime jurisdiction contained in the circular in question, and which was adopted before this Government was made acquainted with the nature of the instructions which it was proposed by her Majesty's government to issue, was used for the sake of brevity in expressing the interpretation which has been heretofore placed upon the first article of the treaty of 1818 by this Government, and not with the expectation of renewing a controversial discussion upon the subject, which, under present circumstances, he would sincerely deprecate.

HAMILTON FISH.

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Copy of a Report of a Committee of the Honorable the Privy Council approved by His Excellency the Governor General in Council, on the 1st July, 1870.

On a Report, dated 20th June, 1870, from the Honorable the Minister of Marine and Fisheries, submitting for the information of Your Excellency in Council, a memorandum and documents on the Fishery question, prepared for the Hon. Mr. Campbell, in connection with his mission to England, under the Minute of Council of 9th instant, and stating that these papers inform him of the position of the question at the present time, and of the views expressed on various occasions for several years past by the British and Canadian Governments; and that the instructions which may be addressed to Mr. Campbell, with reference to bringing to an early settlement all matters that have been admitted into dispute between the British and American Governments, affecting the Fisheries, should embrace the following principal points:

1. That fishing rights in British American waters shall be in future enforced, as they existed and were maintained, under the Treaty of 1818, anterior to the Reciprocity Treaty of 1854, in accordance with the Laws of Nations.

2. That failing such positive enforcement of these undoubted rights, the question arising out of the said Treaty, as to the definition of certain limits of exclusion, by headland lines, be referred to a mixed commission, to be named by the British and American Governments, and to be composed of one Imperial, one United States, and one Canadian Commissioner, providing some independent reference in case of need; the principle on which such commission shall be chosen and act, to be as provided in the Earl of Clarendon's Despatch of 11th May, 1866.

3. That such mixed Commission shall be formed during the current year, and shall, in order to facilitate speedy reference, hold its sittings either at Halifax, Washington, or Ottowa; the negotiations and preliminary arrangements for the same to be carried out between the Governor General of Canada and the United States Government, through the British Minister at the American Capital.

The Committee recommend that the Report of the Honorable the Minister of Marine and Fisheries be approved and acted on.

Certified.

(Signed), WM. H. LEE,
Clerk Privy Council.

To the Honorable the MINISTER OF MARINE AND FISHERIES, &c., &c., &c.

Mr. Thornton to Mr. Fish.

WASHINGTON *July 11. 1870*

SIR: With reference to your Note of the 31st of May last, copy of which I forwarded to the Governor General of Canada, I have now the honour to inclose copy of His Excellency's reply, forwarding a Memorandum from the Canadian Minister of Marine and Fisheries, the explanations contained in which will, I have no doubt, be satisfactory to the Government of the United States.

I have, etc.,

EDWd. THORNTON.

The Hon. HAMILTON FISH &c.

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[Inclosure No. 1.]

Governor General Young to Mr. Thornton.

No. 88.] NIAGARA *July 6. 1870*

SIR: In reply to your despatch dated June 1. 1870 (No. 27) with reference to Mr. Fish's objection to the Order in Council of the 8th Jan. last, I beg to inclose for your informn. a copy of a minute of the Privy Council explaining their views on the question.

The special instructions dated 14th May which govern Canadian officers engaged in the Fisheries protection service seem to comply with the latter branch of the alternative suggested by Mr. Fish, and to leave no room for doubt that the U. S. Fishermen are secured from interference while in the exercise of the liberty guaranteed to them by the Treaty of 1818 to fish along the coast east of Mount Joly.

I have, &c

(Signed) JOHN YOUNG

EDWd THORNTON Esq C. B., &c.

[Inclosure No. 2.]

Copy of a Report of a Committee of the Honourable the Privy Council approved by His Excellency the Governor General in Council on the 1st July 1870.

On the annexed Memorandum from the Hon. the Minister of Marine and Fisheries dated 14th June 1870, on the subject of the despatch of Mr. Thornton, H. M. Minister at Washington, of the 1st instant respecting the limits of the Canadian Fisheries.

The Committee concur in the memorandum of the Minister of Marine and fisheries, and recommend accordingly.

Certified.

(Signed) WM. H. LEE,
Clk. P. C., Canada.

[Inclosure No. 3.]

Memorandum on Mr. Thornton's Despatch of 1st instant.

The first communication from Mr. Thornton dated 22nd April 1870, covering a note of the previous day's date from Mr. Fish, both of which are referred to in the report of the undersigned of 28th ultº. relates to the wording of the Order in Council of 8 January last, and expresses apprehension of "interference with rights guaranteed to the U. S. under the first article of the Treaty of 1818, which secures to American fishermen the right of fishing in certain waters understood to be claimed *at present* as belonging to Canada."

Mr. Thornton's despatch also mentions a verbal communication on the same subject from Mr. Fish. It was supposed to have reference to some "recent" change of boundaries incident to Confederation, or the acquisition of the Hudson's Bay Company's rights on the Labrador Coast; the latter of which are expressly reserved in the said Treaty. Assurance was therefore conveyed to Mr. Fish in pursuance of the Minute of Council of 10th ultimo, that no such interference as that apprehended could possibly be contemplated by the Canadian Government.

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A further despatch from Mr. Thornton of 1st instant, inclosing Mr. Fish's correspondence at length, now explains the full meaning of Mr. Fish's objection to the phraseology of the Order in Council of 8 January last, and states the argument on which Mr. Thornton acquiesces in Mr. Fish's request that the order should be modified as far as U. S. fishermen are concerned.

Mr. Fish takes exception to the terms of this Order in Council because of the words "Waters of Canada" which have since 1825 included part of the Southern coast of Labrador and Islands in the gulf of St. Lawrence, and which at the time of the Treaty of 1818 were subject to the municipal Jurisdiction of Newfoundland.

The Act of 6 Geo. IV by which this ancient change of Provincial boundaries was effected in an Imperial Statute, and necessarily reserves by implication all existing Treaty arrangements of an unconditional nature between the Empire and foreign Powers. Such also would be the necessary effect of legislative or executive action, regarding any matter of local jurisdiction.

The territory and waters affected would not cease to be British because of changes of inter colonial boundaries established by the Imperial Parliament.

Mr. Fish seems to desire a modification of this Order in Council chiefly with a view to providing against any misapprehension in respect of the Treaty rights of U. S. citizens on the part of those who may be charged with its execution, and suggests that additional instructions should issue.

The Undersigned considers that the subsequent Order in Council of 10th ult°. is sufficiently explicit and ought to be quite satisfactory.

If anything were really wanting to assure Mr. Thornton & remove Mr. Fish's apprehensions, reference might be made to the Canadian Statutes relating to fishing by foreign vessels (copy herewith) and to the following extract from the Special Instructions (dated 14 ultimo) which govern officers engaged in the fisheries protection service.

1. "U. S. fishermen may exercise the liberty of fishing in common with British subjects along that part of the Coast of Canada extending from Mount Joy near the River Grande Natashquhan, to the easterly limit of Canada, at Blanc Sablon Bay, and around the Magdalen Islands; and enjoy freedom also to land and cure fish on certain of the unsettled shores of the Labrador Coast.

"Wherever any settlement exists within those limits, the privilege of landing and curing fish may be enjoyed by previous agreement with the settlers or proprietors of the ground."

The Order in Council of the 10th ult°. explains the necessary use of the descriptive term "Waters of Canada" to which exception is taken, and as there is not the remotest probability of any such interference with the rights of American fishermen as Mr. Fish seems to apprehend, the Undersigned cannot perceive any sufficient reason why the Minute of Council of 8 January last should be modified in the way suggested by Mr. Thornton.

(Signed) P. MITCHELL,
Min. of Marine & Fisheries.

DEPT. OF MARINE AND FISHERIES,
Ottawa, 14 June, 1870.

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Earl of Kimberley to Sir John Young.

Canada—No. 198.]

DOWNING STREET, *27th July, 1870.*

SIR: On receiving from Her Majesty the Seals of this Office, I took an early opportunity of communicating with Mr. Campbell, the Postmaster General of Canada, who has come to England to place before Her Majesty's Government the views of Your Government on various questions connected with the Dominion.

Mr. Campbell brought under my consideration the following subjects:

The first was the protection of the Canadian Fisheries from encroachments by foreign fishing vessels. On this point I concur with your Ministers, that it would be desirable that the questions which have been so long in dispute with the United States, as to the geographical limits of the exclusive fishing rights of Canada under the Treaty of 1818, should be settled by a joint British and American Commission, on which the Dominion should be represented. Her Majesty's Government will propose to the United States Government the appointment of such a Commission.

Now that the instructions given to Her Majesty's cruisers and the Government vessels of Canada have been brought into harmony, I do not think it necessary in this despatch to make any observations on the details of those instructions.

I will only remark that I am most anxious to avoid any misunderstanding on this subject, between the Imperial and Canadian Governments, and with this view, the regulations to be issued for the fishing season of 1871, should be considered by the two Governments in good time before the season commences. Their nature must, of course, much depend on the establishment and progress of the proposed Commission, but I shall gladly receive from your Government, at the proper time, any statement on this subject and shall give it my best attention.

* * * * * * *

I have, &c.,

(Signed) KIMBERLEY.

Consul Jackson to Mr. Fish.

No. 300] CONSULATE OF THE UNITED STATES OF AMERICA,
Halifax, N. S., September 5, 1870.
(Received September, 10.)

SIR: I have the honor to inclose herewith copies of a correspondence with Vice-Admiral George Greville Wellesley, respecting supplies to American fishermen in colonial ports.

The contradictory reports in circulation in reference to the orders given by the vice-admiral and the frequent applications made to me by American citizens engaged in the ocean fisheries for information on the subject rendered the correspondence necessary.

It will be seen by the vice-admiral's communication that for the first time since the treaty of peace of 1815 have the imperial author-

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ities prohibited ice, bait, or other supplies from being furnished in the colonial ports to American fishermen engaged in the deep sea or ocean fisheries. And this prohibition, so extraordinary and unprecedented, was neither announced nor enforced, either by the imperial or Dominion authorities, until after the commencement of the fishing season, when our vessels were on their voyages to the fishing grounds.

In my judgment the grounds upon which the prohibition is sought to be justified by the vice-admiral are wholly untenable, and arise from a total misconception of the objects, purposes and intent of the treaty of 1818. That treaty was adopted exclusively for the purpose of settling certain differences and disputes between the United States and Great Britain, respecting the "liberty claimed by the United States to take, dry, and cure fish on certain coasts, bays, harbors, and creeks of her Britannic Majesty's dominions in America." It made no reference to and did not attempt to regulate the deep-sea fisheries, which were open to all the world, and over which Great Britain had not, at the time of the adoption of the treaty, and has not now, any more control than the United States.

It is obvious that the words "and for no other purpose whatever," used in the treaty of 1818, immediately after the clause declaring that "the American fishermen shall be admitted to enter such bays or harbors for the purpose of shelter and of repairing damages therein, of purchasing wood and of obtaining water," must be construed to apply solely to such purposes as are in contravention of the treaty; namely, to purposes connected with the taking, drying, or curing fish within three marine miles of certain coasts, and not in any manner to supplies intended for the ocean fisheries, with which the treaty had no connection; supplies which ever have been and ever must be legitimate articles of trade and commerce, and which cannot, it appears to me, be prohibited in a time of peace, either by the imperial or Dominion authorities, without violating the usages of civilized and enlightened nations.

I have the honor to be, sir, your obedient servant.

M. M. JACKSON,
United States Consul.

[Inclosure No. 1.]

Consul Jackson to Vice-Admiral Wellesley.

CONSULATE OF THE UNITED STATES OF AMERICA,
Halifax, Nova Scotia, August 30, A. D. 1870.

SIR: I perceive it is stated in one of the morning papers of this city that an order has been transmitted from the Canadian authorities prohibiting American fishing vessels from obtaining any supplies in the ports of the British North American provinces. If any such order has been received by your excellency, will you be kind enough to furnish me a copy thereof?

I have the honor to be, sir, your obedient servant,

M. M. JACKSON
United States Consul.

His Excellency Vice-Admiral WELLESLEY, C. B., &c., &c., &c.

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[Inclosure No. 2.]

Vice-Admiral Wellesley to Consul Jackson.

ROYAL ALFRED, AT HALIFAX,
August 31, 1870.

SIR: I have the honor to acknowledge the receipt of your letter of yesterday's date, and to inform you, in reply, that I have not seen the statement in the morning papers alluded to; and as such an order would probably have been addressed by the Dominion government to its own officers, I can only suggest that an application should be made to the Dominion government for the information required.

I have the honor to be, sir, your very obedient servant,

GEORGE G. WELLESLEY,
Vice-Admiral.

[Inclosure No. 3.]

Consul Jackson to Vice-Admiral Wellesley.

CONSULATE OF THE UNITED STATES OF AMERICA,
Halifax, Nova Scotia, September 1, A. D. 1870.

SIR: I have the honor to acknowledge the receipt of your communication of yesterday, suggesting an application to the Dominion authorities for the information which I requested.

I addressed you under the impression that the imperial and Dominion authorities were cooperating and acting under the same orders, regulations, and instructions in reference to all matters connected with the protection of the inshore fisheries.

As American fishermen are almost daily visiting this port on their way to the fishing banks, it becomes a matter of great importance to them to know whether any orders have been issued by your excellency, as the representative of the imperial government, to prevent them from obtaining such supplies as have been customary, both before and since the treaty of 1818, in all the ports of the British North American provinces.

Since addressing you I have understood that the commanders of her Majesty's vessels, acting under the authority of your excellency, have notified American fishermen bound to the fishing banks that they would not be permitted to procure ice or other supplies in any of the colonial ports, and that any attempt to procure such supplies would subject their vessels and cargoes to seizure and confiscation.

As consul of the United States I am frequently applied to by American citizens engaged in the deep-sea fisheries for information on this subject. To enable me to give such information I have respectfully to request you to furnish me with copies of any orders issued by your excellency in relation to supplies to American fishermen.

I have the honor to be, sir, your obedient servant,

M. M. JACKSON,
United States Consul.

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[Inclosure No. 4.]

Vice-Admiral Wellesley to Consul Jackson.

ROYAL ALFRED, AT HALIFAX,
September 3, 1870.

SIR: I have the honor to acknowledge the receipt of your letter of yesterday's date, in which you request me to furnish you with copies of any orders I have issued in relation to supplies to American fishermen, and, in reply, to state that copies of my instructions to the officers under my orders were transmitted to her Majesty's minister at Washington, and were by him communicated, by the orders of her Majesty's government, to the United States Secretary of State.

Although it is not within the scope of my authority to furnish you with these documents, I may state in general terms, which will probably be sufficient for the purpose you have in view, that the duty enjoined on the commanding officers of her Majesty's ships is to prevent any infringement of the arrangements agreed on between the two governments in respect of the fisheries in the treaty of 1818. That treaty expressly defines the purposes for which alone United States fishing vessels are to be allowed to enter ports within certain limits. The words used are as follows:

"*Provided, however*, That the American fishermen shall be admitted to enter such bays or harbors for the purpose of shelter and repairing damages therein, of purchasing wood and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

It appears to me that the expression "for no other purpose whatever" excludes them from procuring ice, bait, or other supplies, and the officers have, therefore, in my judgment, properly notified American fishermen against any attempt to infringe the treaty, and, by so doing, also disobey the British and colonial laws in reference thereto, in which the very same terms are used.

I have the honor to be, sir, your very obedient servant,

GEORGE G. WELLESLEY,
Vice Admiral.

Report of Alexander Campbell to His Excellency the Right Honorable Sir John Young, Bart., Governor General of Canada.

[10 September, 1870.]

MAY IT PLEASE YOUR EXCELLENCY,—Having been in June last requested to proceed to England to make personal representations to Her Majesty's Government on the several subjects hereinafter mentioned, and having discharged the duties entrusted to me, I beg to submit a report of my proceedings.

I found on my arrival in London that the death of the Earl of Clarendon, which had occurred whilst I was at sea, rendered a change in the Colonial Office probable, and although Lord Granville was good enough to see me on the subject of my visit, it was not until the appointment of his successor that I had an opportunity of making those full representations which it was the desire of Your Excellency's Government I should submit on the several subjects referred to. Lord

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Kimberley honored me with repeated interviews, and received my representations with every attention and consideration.

* * * * * * *

3. Fisheries—I urged upon Lord Kimberley the great importance to Canada of the Fisheries, which employed a large number of seamen, and had many collateral pursuits and industries dependent upon them. We possessed the whole of the herring and mackerel Fisheries on the Western side of the Atlantic, the Americans having no inshore Fisheries of any great value. This possession was of the first importance to us, and we felt exceedingly anxious that it should be maintained in accordance with Treaty rights. Induced by a strong sense of the responsibility involved in the matter, and out of deference to Imperial views we had proposed in 1865 the License System; we had given every possible opening in this direction at a sacrifice of our immediate interests in order that our affairs might not tend to endanger the peace of the Empire. This system had been continued to the present year, and we were satisfied that no advantageous results would be obtained from it.

Lord Kimberley admitted that the time had come when Canadians might reasonably expect that the state of things anterior to the Reciprocity Treaty should be reverted to, or that some other definite arrangements with the Americans on this subject should be arrived at. He added that he was glad that I had not mixed up the two questions of Reciprocity and the Fisheries, because he saw no reason to expect a renewal of that treaty; he agreed, he said, that the Fisheries question should be treated by itself. I said that we in Canada had arrived at similar conclusions. The policy of conciliation had been fully tried, and we ceased to expect anything from the Americans from it. We thought the only course now open to us was to ask the Imperial Government to fall back upon the rights which we enjoyed and maintained anterior to the Reciprocity Treaty, and I was directed to request this at the hands of the Government.

Lord Kimberley said there might be some difference with regard to the Interpretation of the Treaty as to Bays. I replied that we thought it clear upon that point, but that the suggestion made by Mr. Adams in 1866, and adopted by Lord Clarendon, to have a joint commission to settle on the ground the line within which, under the Treaty, exclusive fishing was to be enjoyed would be a satisfactory mode, as far as the Canadian Government was concerned, of disposing of any difficulty which might exist as to the interpretation of the treaty as regards Bays; but I urged that should a Commission be appointed a representative from Canada should be upon it, and that its sittings should be held in America, and if possible in Ottawa or Halifax.

Lord Kimberley said he concurred in the suggestion for the settlement of whatever doubt might be found to exist as to the interpretation to be put upon the Treaty with regard to Bays; that he merely spoke his views, however, but that he would bring the matter at an early day before his colleagues, and would then give a final answer.

* * * * * * *

All of which is respectfully submitted,
By Your Excellency's Most faithful servant,

A. CAMPBELL.

OTTAWA, *10th September, 1870.*

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Consul Jackson to Mr. Davis.

No. 301.] CONSULATE OF THE UNITED STATES OF AMERICA,
Halifax, N. S., October 3, 1870.
(Received October 14.)

SIR: I have the honor, in answer to the inquiries contained in your dispatch No. 256, in reference to the fisheries, to submit the following report:

FISHERY LAWS.

The existing laws relating to the fisheries consist of the treaty of 1818, between the United States and Great Britain; the imperial act framed June 14, 1819, for the purpose of carrying the provisions of the treaty into effect; the British North American act framed March 29, 1867, giving authority to the Canadian government over the sea-coast and inland fisheries; and the Dominion acts framed respectively May 22, 1868, and May 12, 1870, relating to fishing by foreign vessels.

All these acts, Canadian as well as imperial, purport to be founded upon the treaty of 1818, and designed to enforce its provisions. Some of the provisions of the colonial acts respecting the fisheries are borrowed from imperial statutes relating to trade and navigation, and although enacted to protect the in-shore fisheries, are not strictly applicable to fishing vessels.

SUPPLIES.

In no act is there any prohibition against fishing vessels visiting colonial ports for supplies. The silence of all the acts upon this point, and the practice of more than half a century under imperial laws, framed expressly for the purpose of carrying into effect the provisions of the treaty, justify the conclusion that no such prohibition was contemplated by it. This view of the subject derives additional support from the fact that at the time of the adoption of the treaty the mackerel fishing, as now carried on, was comparatively unknown.

During the intervening years between 1818 and 1870, throughout all the controversies between the United States and Great Britain on the subject of the fisheries, no question until the present had arisen in reference to supplies. They were always readily procured in colonial ports, and the trade being profitable to the people of the colonies was facilitated by the local authorities.

The controversies which preceded the adoption of the reciprocity treaty related principally to our right to fish in certain bays, and to the exact limits within which American fishermen, by the convention of 1818, were entitled to fish on the coasts of British North America.

The rights insisted upon by citizens of the United States were practically decided in their favor by the commissioners appointed under the convention of 1853, between the United States and Great Britain, in the case of the schooner Washington. That schooner, while fishing in the Bay of Fundy in 1843, ten miles distant from

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the shore, was seized by the British authorities, taken into Yarmouth, Nova Scotia, and there condemned for a violation of the fishery laws.

In 1853, after the adoption of the reciprocity treaty, the case was brought before the commissioners on a claim of the owners of the schooner for damages; and after a full and careful examination was decided in favor of the claimants, to whom damages were awarded for the illegal seizure and condemnation. Since that time what is termed the "headland" interpretation of the treaty, theretofore at different times insisted upon by Great Britain and uniformly opposed by the United States, if not actually abandoned, has been held in abeyance, and it is not probable that any questions will hereafter arise in relation to it between the two countries.

In regard to fishing supplies, the practice which has so long prevailed of procuring them in colonial ports, with the full knowledge and consent of both governments, whose citizens have mutually shared in the benefits resulting from such practice, must be regarded as a practical construction given to the treaty which concludes all parties.

TRANSSHIPMENT IN BOND.

Since the abrogation of the reciprocity treaty until within a few weeks past, it had been the practice of the colonial authorities to permit the transshipment in bond of American-caught fish. The practice was founded upon no statutory enactment, but was adopted as a commercial regulation, mutually beneficial to our fishermen and the people of the provinces. It afforded facilities to the former in the prosecution of a lawful and useful avocation, and increased the trade and contributed to the prosperity of the latter. While its discontinuance, in itself, violates no established commercial usage between friendly nations, as in the case of the prohibition of supplies to our fishermen, yet the *time* of its discontinuance, in the midst of the fishing season, without previous notice, and when much greater and more important bonding privileges were, and still are, extended by the United States to the British colonies, is a just cause of complaint.

FRESH FISH.

While fresh fish, the product of the British North American fisheries, is admitted into the United States *duty free*, our fishermen are prohibited from procuring ice for fresh fish caught while fishing side by side with British fishermen on the same banks.

PILOTAGE.

To subject fishing vessels coming into colonial ports, as is now the case, to the compulsory regulations respecting pilotage applied to merchant vessels, and at the same time to deny them when in port the ordinary privileges extended to such merchant vessels, is manifestly unjust.

BURDEN OF PROOF CHANGED.

The Dominion act framed in 1868 reverses, in violation of the principles of common law, the ordinary modes of proof, and declares,

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in section ten, that "in case a dispute arises as to whether any seizure has or has not been legally made, or as to whether the person seizing was or was not authorized to seize under the act, the burden of proving the illegality of the seizure shall be upon the owner or claimant." Under this section an American fishing vessel coming into port in the exercise of a conceded and unrestricted treaty right, either for the purpose of shelter, of repairing damages therein, of purchasing wood, and obtaining water, and unlawfully seized, instead of being presumed to be in port for a lawful purpose, is presumed by the act of seizure itself, however unauthorized, to be guilty of a violation of the fishery laws. Thus the presumption of guilt, which is to subject a fishing vessel to seizure and confiscation, is made, in the first instance, to depend upon the caprice of the seizing officer, and not upon the conduct of the officers and crew of the captured vessel. It is obvious that such a rule of action must be instrumental in inflicting wrong and injury upon innocent and unoffending parties.

STRAIT OF CANSO.

It has been intimated that still further restrictions will be imposed upon our fishermen, and that an attempt will be made to exclude them from the Strait of Canso. This appears to me incredible, in view of established principles of international law and the usage which has so long prevailed.

Wheaton, in his Elements of International Law, says: "Straits are passages communicating from one sea to another. If the navigation of the two seas thus connected is free, the navigation of the channel by which they are connected ought also to be free. Even if such strait be bounded on both sides by the territory of the same sovereign, and is, at the same time, so narrow as to be commanded by cannon-shot from both shores, the exclusive territorial jurisdiction of that sovereign over such strait is controlled by the right of other nations to communicate with the seas thus connected." And he holds that the "principle on which the right to navigate straits depends is, that they are accessorial to those seas which they unite, and the right of navigating which is not exclusive but common to all nations, the right to navigate the seas drawing after it that of passing the straits."

The Strait of Canso for more than a century has been open as a public highway to the vessels of all friendly nations. It formerly separated French from English territory, and after the restoration of Cape Breton to England by the capture of Louisburg in 1745, through the aid of troops from Massachusetts, it was kept open to the commerce of the world. Afterward, when Cape Breton, in 1812, ceased to be a separate British colony, and was united to and became a part of Nova Scotia, within whose territorial limits it then became included, the strait still remained open, as a public highway, to the vessels of every nation, and has since continued without interruption, and still continues to be used and enjoyed as a general thoroughfare by American vessels in common with vessels from other countries.

After such a dedication of this strait to maritime and commercial uses by the French, English, and colonial authorities, and after our vessels have pursued their fishing voyages through it for more than a century, our right to navigate it cannot now be questioned.

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VESSELS REQUIRED TO LEAVE PORT.

The manner in which the fishery laws are now construed and attempted to be enforced by the Dominion authorities, if acquiesced in would amount to a practical exclusion of our fishing vessels from colonial ports; for, although their right to enter for the purpose of "shelter, repairing damages, purchasing wood and obtaining water," is guaranteed by solemn treaty, yet, no sooner do they now enter, than, contrary to all former practice, they are required to depart even before it is ascertained for what purpose and under what circumstances they resort thither.

While authority is given to certain officers, both imperial and Canadian, to seize any American fishing vessel "found within three marine miles of any of the coasts, bays, creeks, or harbors in Canada," which, after examination, "has been found fishing or preparing to fish, or to have been fishing in British waters," yet nothing in any of the acts respecting the fisheries warrants this summary exclusion of such vessel from port, or prohibits any vessel from entering as well for the purpose of procuring supplies, as for shelter, repairs, wood, and water. On the contrary, the fishery laws themselves, as well as the regulations respecting pilotage, recognize the right of foreign fishing vessels freely to enter the ports of the British North American provinces.

The rigorous measures now for the first time adopted, which materially affect the interests of a large class of American citizens engaged in the prosecution of an important branch of industry, while deriving no sanction from the treaty of 1818, or the usages of nations, are rendered still more objectionable from having been undertaken without notice previously given, either by the Canadian minister of marine and fisheries, by the collectors of colonial customs, or by the vice-admiral in command of her Majesty's fleet in the British North American waters. In consequence of which, American fishing vessels, on their voyages to the Grand Banks, have been seized in colonial waters, and, in subversion of every principle of right or justice, subjected to confiscation under some previously unknown order. Our fishermen can better endure hardship and peril than wrong and injustice.

Our fisheries furnish a nursery for a vigorous and energetic race of seamen in time of peace, and effectively add to our naval strength in time of war; and the enterprising and intrepid men engaged in them—whose employment is as hazardous to themselves as beneficial to the nation—should be encouraged by the liberality and protected by the power of the republic.

I have the honor to be, sir, your obedient servant,

MORTIMER M. JACKSON,
United States Consul.

Earl of Kimberley to Sir John Young.

Canada—Confidential.]

DOWNING STREET, *10th October, 1870.*

SIR,—I enclose copy of a memorandum, which I have requested Lord Granville to transmit to Sir E. Thornton, with instructions to communicate with you before addressing himself to the Government

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of the United States, on the subject to which the memorandum relates.

The object of Her Majesty's Government is, as you will observe, to give effect to the wishes of your Government, by appointing a Joint Commission, on which Great Britain, the United States, and Canada, are to be represented, with the object of enquiring what ought to be the geographical limits of the exclusive Fisheries of the British North American Colonies. In accordance with the understood desire of your advisers, it is proposed that the enquiry should be held in America.

The proposal contained in the last paragraph, is made with a view to avoid diplomatic difficulties, which might otherwise attend the negotiation.

I have, etc.,

(Signed) KIMBERLEY.

Governor-General The Right Hon. Sir JOHN YOUNG, G. C. B., G. C. M. G.

[Inclosure.]

Memorandum for Foreign Office respecting a Commission to settle limits of the right of exclusive Fishery on the Coast of British North America.

A convention made between Great Britain and the United States, on the 20th October, 1818, after securing to American fishermen certain rights to be exercised on part of the coasts of Newfoundland and Labrador, proceeded as follows:—

"And the United States hereby renounce, for ever, any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish on or within three miles of any of the coasts, bays, creeks, or harbors of His Brittanic Majesty's Dominions in America, not included within the above limits."

The right of Great Britain to exclude American fishermen from waters within three miles of the coast is unambiguous, and it is believed, uncontested. But there appears to be some doubt what are the waters described as within three miles of bays, creeks, and harbors. When a bay is less than six miles broad, its waters are within the three miles limit, and therefore clearly within the meaning of the Treaty; but when it is more than that breadth, the question arises whether it is a bay of Her Britannic Majesty's Dominions.

This is a question which has to be considered in each particular case with regard to International Law and usage. When such a bay, etc., is not a bay of Her Majesty's Dominions, the American fishermen will be entitled to fish in it, except within three miles of the "coast"; "when it is a bay of Her Majesty's Dominions" they will not be entitled to fish within three miles of it, that is to say, (it is presumed), within three miles of a line drawn from headland to headland.

It is desirable that the British and American Governments should come to a clear understanding in the case of each bay, creek, or harbor, what are the precise limits of the exclusive rights of Great Britain, and should define those limits in such a way as to be in-

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capable of dispute, either by reference to the bearings of certain headlands, or other objects on shore, or by laying the lines down in a map or chart.

With this object it is proposed that a Commission should be appointed, to be composed of representatives of Great Britain, the United States, and Canada, to hold its sittings in America, and to report to the British and American Governments their opinion either as to the exact geographical limits to which the renunciation above quoted applies, or if this is found impracticable, to suggest some line of delineation along the whole coast, which, though not in exact conformity with the words of the Convention, may appear to them consistent in substance with the just rights of the two nations, and calculated to remove occasion for further controversy.

It is not intended that the results of the Commission should necessarily be embodied in a new Convention between the two countries, but if an agreement can be arrived at, it may be sufficient that it should be in the form of an understanding, between the two Governments, as to the practical interpretation which shall be given to the Convention of 1818.

Mr. Fish to Consul-General Dart.

No. 126.] DEPARTMENT OF STATE,
Washington, October 29, 1870.

SIR: Several seizures of American fishing vessels are reported by the consular officers within your consulate general, and by the parties interested. Some of the vessels thus seized upon the charge of violating the laws of the Dominion of Canada, or the other British North American provinces, have been taken into port for adjudication by the tribunals to which that function is assigned by the laws of the respective provinces. It is to be presumed that those tribunals will decide the cases respectively with intelligence and impartiality. It is the duty of the owners of the vessels to defend their interests before the courts at their own expense and without special assistance from the Government in the present stage of affairs. It is for those tribunals to construe the statutes under which they act. If the construction they may adopt shall appear to be in contravention of our treaties with Great Britain, or to be (which cannot be anticipated) plainly erroneous in a case admitting no reasonable doubt, it will then become the duty of the Government—a duty it will not be slow to discharge—to avail itself of all necessary means for obtaining redress. The present embarrassment is, that while we have reports of several seizures upon grounds as stated by the interested parties, which seem to be in contravention of international law and special treaties relating to the fisheries, these alleged causes of seizure are regarded as pretensions of over-zealous officers of the British navy and the colonial vessels, which will, as we hope and are bound in courtesy to expect, be repudiated by the courts before which our vessels are to be brought for adjudication. It is the desire of this Government, nevertheless, that our consular officers should watch the course of proceeding in these cases, and give prompt and authentic information of any decision which may be made in them. In particular if the charge against any American fishing vessel is only that she has been preparing to fish, without actual fishing in the pro-

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hibited limits, it is to be made known to the counsel of the owners of the vessel that this Government is not disposed to regard such mere preparation as an infraction of the obligations of our citizens engaged in the outfit and employment of fishing vessels, and it is desirous of having the point distinctly presented and adjudicated, if possible, without being complicated with other questions, so that if adversely decided, a case presenting that single issue may be made for appeal to the British tribunal of last resort. It is understood that the instructions of the imperial government of Great Britain do not authorize the capture of an American vessel *found fishing* within three miles of the coasts from which they are prohibited, or of a line drawn across the mouths of bays whose mouths do not exceed six geographical miles in width. In any case of condemnation it is desirable to have it appear with precision as well whether the vessel condemned was fishing within the prohibited distance, as whether the actual capture was made within that distance or beyond it, so as to be upon the high seas, in the sense which this Government is disposed to attach to these words, for the purpose of questions arising out of the operations of our fishing vessels on the northeastern coast.

In short, without incurring any expense in the employment of counsel till further instructed, it is expected that our consular officers in the districts where trials may take place of American vessels for supposed violations of the laws of the British imperial or colonial governments will lend their countenance and aid to the parties interested and give prompt information of any decisions which may be made. They will request, in courteous terms, of the proper officer of any court making a decision, a certified copy of the opinion which may be written in the cause, paying the proper fee therefor, which will be allowed in their quarterly accounts, and forward it with the least possible delay.

This Department has expected such information from the spontaneous activity of our consular officers, and attributes the absence of it to the provincial courts being now in vacation. If this is the fact, I shall be glad to be informed of the dates at which the respective courts, having jurisdiction in the premises, may be expected to convene for the dispatch of business.

You will call the attention of all the consuls in your jurisdiction to the contents of this instruction, who are located at points where vessels will be likely to be taken in for adjudication.

HAMILTON FISH.

No. 123] *Consul-General Dart to Mr. Fish.*

CONSULATE GENERAL OF THE UNITED STATES OF AMERICA
FOR THE BRITISH NORTH AMERICAN PROVINCES,
Montreal, November 3, 1870.

SIR: I have the honor to acknowledge receipt of your dispatch of the 29th ultimo, in reference to the seizure of American fishing vessels off the coast of Nova Scotia and Prince Edward Island.

Upon the receipt of your telegram of the 28th ultimo, I sent a dispatch to all the consuls in the maritime provinces, calling their attention to their duty to report on cases of seizure by telegraph, and also in writing by mail.

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Upon the receipt of yours of the 29th, which came to hand yesterday, I caused copies to be at once prepared, and despatched the same by mail, accompanied by a letter to each, of which the inclosed is a copy. Two, at least, of the important consuls, those at Halifax and St. John, are now absent on leave from the Department, and I fear their deputies may not be as accurate in collecting information as the consuls would have been if at home.

It seems to me that the unfriendly construction given by the Dominion government of the treaty of 1818 was intensified in its harshness by the almost covert manner in which it was sought to be enforced. It was with the greatest difficulty that our consuls could ascertain from the commanders of the various armed vessels what they would consider cause for seizure and condemnation.

No adequate or suitable notice was given to the captains of American fishing vessels, and they were seized for acts which they had been permitted to do from time immemorial, as well before as subsequently to the above-mentioned treaty.

Information has come to me from so many sources of declarations made by the various ministers of the Dominion government, that I cannot doubt, and it is openly proclaimed here and believed to be true, that the enforcement of the above mentioned treaty, in the manner it has been enforced, has two objects, viz: one of which is to create a Canadian sentiment in antagonism to the United States, with a view to check the spread of American sentiment here looking to ultimate annexation; the other object is, by the close control of the fishing interests to compel the United States, through her interests, to make a treaty of reciprocity of trade between the United States and the British provinces in North America.

The prevention of our vessels from purchasing supplies in Nova Scotia and Prince Edward Island is injuring the trade and commerce of those points, while the Dominion government is deriving no corresponding advantage.

But a small fraction of the fish taken there is taken by the Canadians, and the exclusion of the people of the United States from there will not be likely, in view of the character of the inhabitants, and the duty upon fish, if maintained, to increase the number of Canadian fishermen.

I have the honor to be, very respectfully, your obedient servant,

WILLIAM A. DART,
Consul General.

Sir Edward Thornton to Mr. Fish.

WASHINGTON, *January 26, 1871.*

SIR: In compliance with an instruction which I have received from Earl Granville, I have the honor to state that Her Majesty's Government deem it of importance to the good relations which they are ever anxious should subsist and be strengthened between the United States and Great Britain, that a friendly and complete understanding should be come to between the two Governments as to the extent of the rights which belong to the citizens of the United States and Her Majesty's subjects, respectively, with reference to the fisheries on

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the coasts of Her Majesty's possessions in North America, and as to any other questions between them which affect the relations of the United States toward those possessions.

As the consideration of these matters would, however, involve investigations of a somewhat complicated nature, and as it is very desirable that they should be thoroughly examined, I am directed by Lord Granville to propose to the Government of the United States the appointment of a Joint High Commission, which shall be composed of members to be named by each Government; shall hold its sessions at Washington, and shall treat of and discuss the mode of settling the different questions which have arisen out of the fisheries, as well as those which affect the relations of the United States toward Her Majesty's possessions in North America.

I am confident that this proposal will be met by your Government in the same cordial spirit of friendship which has induced Her Majesty's Government to tender it, and I cannot doubt that in that case the result will not fail to contribute to the maintenance of the good relations between the two countries, which I am convinced the Government of the United States, as well as that of Her Majesty, equally have at heart.

I have the honor to be, with the highest consideration, sir, your most obedient, humble servant,

EDWARD THORNTON.

Hon. HAMILTON FISH, &c.

Mr. Fish to Sir Edward Thornton.

DEPARTMENT OF STATE,
Washington, January 30, 1871.

SIR: I have the honor to acknowledge the receipt of your note of January 26, in which you inform me, in compliance with instructions from Earl Granville, that Her Majesty's Government deem it of importance to the good relations which they are ever anxious should subsist and be strengthened between the United States and Great Britain, that a friendly and complete understanding should be come to between the two Governments as to the extent of the rights which belong to the citizens of the United States and Her Majesty's subjects, respectively, with reference to the fisheries on the coasts of Her Majesty's possessions in North America, and as to any other questions between them which affect the relations of the United States toward those possessions; and further, that as the consideration of these questions would involve investigations of a somewhat complicated nature, and as it is very desirable that they should be thoroughly examined, you are directed by Lord Granville to propose to the Government of the United States the appointment of a Joint High Commission, which shall be composed of members to be named by each Government; shall hold its sessions at Washington, and shall treat of and discuss the mode of settling the different questions which have arisen out of the fisheries, as well as all those which affect the relations of the United States toward Her Majesty's possessions in North America.

I have laid your note before the President, who instructs me to say that he shares with Her Majesty's Government the appreciation of

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the importance of a friendly and complete understanding between the two Governments with reference to the subjects specially suggested for the consideration of the proposed Joint High Commission, and he fully recognizes the friendly spirit which prompted the proposal.

The President is, however, of the opinion that, without the adjustment of a class of questions not alluded to in your note, the proposed High Commission would fail to establish the permanent relations and the sincere, substantial, and lasting friendship between the two Governments which, in common with Her Majesty's Government, he desires should prevail.

He thinks that the removal of the differences which arose during the rebellion in the United States, and which have existed since then, growing out of the acts committed by the several vessels which have given rise to the claims generally known as the "Alabama" claims, will also be essential to the restoration of cordial and amicable relations between the two Governments. He directs me to say that should Her Majesty's Government accept this view of the matter, and assent that this subject also may be treated of by the proposed High Commission, and may thus be put in the way of a final and amicable settlement, this Government will, with much pleasure, appoint High Commissioners on the part of the United States, to meet those who may be appointed on behalf of Her Majesty's Government, and will spare no efforts to secure, at the earliest practical moment, a just and amicable arrangement of all the questions which now unfortunately stand in the way of an entire and abiding friendship between the two nations.

I have the honor to be, with the highest consideration, sir, your obedient servant,

HAMILTON FISH.

Sir EDWARD THORNTON, K. C. B., &c.

Sir Edward Thornton to Mr. Fish.

WASHINGTON, *February 1, 1871.*

SIR: I have the honor to acknowledge the receipt of your note of the 30th ultimo, and to offer you my sincere and cordial thanks for the friendly and conciliatory spirit which pervades it.

With reference to that part of it in which you state that the President thinks that the removal of the differences which arose during the rebellion in the United States, and which have existed since then, growing out of the acts committed by the several vessels which have given rise to the claims generically known as the "Alabama" claims, will also be essential to the restoration of cordial and amicable relations between the two Governments, I have the honor to inform you that I have submitted to Earl Granville the opinion thus expressed by the President of the United States, the friendliness of which, I beg you to believe, I fully appreciate.

I am now authorized by His Lordship to state that it would give Her Majesty's Government great satisfaction if the claims commonly known by the name of the "Alabama" claims were submitted to the consideration of the same High Commission by which Her

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Majesty's Government have proposed that the questions relating to the British possessions in North America should be discussed, provided that all other claims, both of British subjects and citizens of the United States, arising out of acts committed during the recent civil war in this country, are similarly referred to the same Commission. The expressions made use of in the name of the President in your above mentioned note, with regard to the "Alabama" claims, convince me that the Government of the United States will consider it of importance that these causes of disputes between the two countries should also, and at the same time, be done away with, and that you will enable me to convey to my Government the assent of the President to the addition which they thus propose to the duties of the High Commission, and which cannot fail to make it more certain that the labors will lead to the removal of all differences between the two countries.

I have the honor to be, with the highest consideration, sir, your most obedient, humble servant,

EDWARD THORNTON.

Hon. HAMILTON FISH, &c.

Mr. Fish to Sir Edward Thornton.

DEPARTMENT OF STATE,
Washington, February 3, 1871.

SIR: I have the honor to acknowledge the receipt of your note of the 1st instant, in which you inform me that you are authorized by Earl Granville to state that it would give Her Majesty's Government great satisfaction if the claims commonly known by the name of the "Alabama claims" were submitted to the consideration of the same High Commission by which Her Majesty's Government have proposed that the questions relative to the British possessions in North America should be discussed, provided that all other claims, both of British subjects and citizens of the United States, arising out of acts committed during the recent civil war in this country, are similarly referred to the same Commission.

I have laid your note before the President, and he has directed me to express the satisfaction with which he has received the intelligence that Earl Granville has authorized you to state that Her Majesty's Government has accepted the views of this Government as to the disposition to be made of the so-called "Alabama claims."

He also directs me to say, with reference to the remainder of your note, that if there be other and further claims of British subjects, or of American citizens, growing out of acts committed during the recent civil war in this country, he assents to the propriety of their reference to the same High Commission; but he suggests that the High Commissioners shall consider only such claims of this description as may be presented by the Governments of the respective claimants at an early day, to be agreed upon by the Commissioners.

I have the honor to be, with the highest consideration, sir, your obedient servant,

HAMILTON FISH.

Sir EDWARD THORNTON, K. C. B., &c.

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The Earl of Kimberley to Lord Lisgar.

DOWNING STREET,
16th February, 1871.

MY LORD: You have already been informed by telegram of the views of Her Majesty's Government upon the Fishery Questions, but I think it will be convenient, with reference to the pending negotiations, that a somewhat fuller statement of those views should now be placed on record.

It would not be possible for Her Majesty's Government to pledge themselves to any foregone conclusion upon any particular point connected with these negotiations, but they have anxiously considered the questions which concern Canada; and they feel confident that the Canadian Government, will agree with them that a satisfactory termination of the difficulties which have arisen with the United States, can only be attained by taking as broad and liberal a view as is consistent with the just rights and real interests of the Dominion.

As at present advised, Her Majesty's Government are of opinion that the right of Canada to exclude Americans from fishing in the waters within the limits of three marine miles of the coast, is beyond dispute, and can only be ceded for an adequate consideration.

Should this consideration take the form of a money payment, it appears to Her Majesty's Government, that such an arrangement would be more likely to work well than if any conditions were annexed to the exercise of the privilege of fishing within the Canadian waters.

The presence of a considerable number of cruisers would always be necessary to secure the performance of such conditions and the enforcement of penalties for the non-observance of them would be certain to lead to disputes with the United States.

With respect to the question, what is a Bay or Creek, within the meaning of the first Article of the Treaty of 1818, Her Majesty's Government adhere to the interpretation which they have hitherto maintained of that Article, but they consider that the difference which has arisen with the United States on this point, might be a fit subject for compromise.

The exclusion of American fishermen from resorting to Canadian Ports, "except for the purpose of shelter, and of repairing damages therein, of purchasing wood and of obtaining water," might be warranted by the letter of the Treaty of 1818, and by the terms of the Imperial Act, 59, Geo. III, chap. 38, but Her Majesty's Government feel bound to state that it seems to them an extreme measure—inconsistent with the general policy of the Empire, and they are disposed to concede this point to the United States Government, under such restrictions as may be necessary to prevent smuggling, and to guard against any substantial invasion of the exclusive rights of fishing which may be reserved to British subjects.

In conclusion I have to state that Her Majesty fully appreciated the loyal and prompt manner in which the Canadian Government have assented to the appointment of the Commission which is about to sit at Washington.

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The high character and recognized ability of the British Commissioners afford ample security that the interests of Canada will be carefully protected during the forthcoming negotiations.

I have, &c., (Signed.) KIMBERLEY.

Earl of Kimberley to Lord Lisgar.

DOWNING STREET, *17th March, 1871.*

MY LORD,—In answer to your telegram received on the 10th instant, stating that in the opinion of your Government, the Canadian Fisheries cannot be sold without the consent of the Dominion, I have already informed your Lordship by Telegraph that Her Majesty's Government never had any intention of advising Her Majesty to part with those fisheries without such consent.

When the Reciprocity Treaty was concluded, the Acts of the Nova Scotian and New Brunswick Legislatures relating to the Fisheries were suspended by Acts of those Legislatures, and the Fishery rights of Canada are now under the protection of a Canadian Act of Parliament, the repeal of which would be necessary in case of the cession of those rights to any Foreign Power.

I think it right however to add that the responsibility of determining what is the true construction of a Treaty, made by Her Majesty with any foreign power, must remain with Her Majesty's Government, and that the degree to which this Country would make itself a party to the strict enforcement of Treaty Rights may depend not only on the literal construction of the Treaty, but on the moderation and reasonableness with which those rights are asserted.

I have, etc.,

(Signed) KIMBERLEY.

Governer General The Right Honorable LORD LISGAR,
G. C. B., G. C. M. G., etc., etc., etc.

Admiral Fanshawe to the Secretary to the Admiralty.

PROTECTION OF THE CANADIAN FISHERIES.

No. 165.] ROYAL ALFRED, BERMUDA, *21st April, 1871.*

SIR—As the Fishing season on the coast of Canada is now approaching, I have to report, for the information of the Lords Commissioners of the Admiralty, that I am about to adopt similar measures to those taken by my predecessor last year for the protection of the Fisheries, and enclose List shewing the Vessels that will probably be employed and their respective stations.

2.—The only addition to the Instructions to the Officers in command proceeding on this service, will be with reference to their Lordships Letter, No. 20, M., of the 15th October, 1870, which will run as follows,—"The transhipment of Fish and obtaining supplies by "American fishery Vessels cannot be regarded as a substantial

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"invasion of British rights, and these vessels are therefore not to be "prevented from entering British Bays for such purposes."

3.—Referring to your letter, No. 302, L. M. M., of the 2nd July, 1870, I request their Lordships instructions whether I am to issue authority to the Colonial cruisers employed under the Government of the Dominion of Canada, to wear a blue Ensign and Pendant during the present season.

I have, etc., etc., etc.,

(Signed,) E. G. FANSHAWE,
Vice-Admiral.

The SECRETARY OF THE ADMIRALTY.

Admiral Fanshawe to the Secretary to the Admiralty.

PROTECTION OF THE CANADIAN FISHERIES.

ROYAL ALFRED, BERMUDA, *18th May, 1871.*

SIR: Referring to my letter of the 21st ultimo, No. 165, relative to the protection to be afforded by Her Majesty's Ships to the Canadian Fisheries during the present season, a copy of which was forwarded to Her Majesty's Minister at Washington, I beg to report, for the information of the Lord Commissioners of the Admiralty, that I have just received a letter from Sir Edward Thornton, in which he informs me that a Treaty was signed at Washington on the 8th May, containing certain stipulations respecting the Fisheries, altho' that Treaty requires ratification, His Excellency recommends that in the meantime American Fishing Vessels should not be captured unless found in flagrant and open violation of the Fishery Laws and Regulations. I have in consequence added a rider to that effect (copies enclosed) to the orders of all Ships about to proceed to the Fisheries frequented by Americans, and have informed the Minister and the Governor General of Canada accordingly.

I have, etc., etc., etc.,

(Signed) E. G. FANSHAWE,
Vice Admiral.

The SECRETARY TO THE ADMIRALTY.

[Inclosure.]

Rider inserted in the instructions for the protection of the fisheries 1871.

As the adjustment of all questions relating to the Fisheries is now under consideration by the Governments of England and the United States, you are to be very careful in the meantime not to capture fishing vessels under American colors, unless found in flagrant and open violation of the Fishery Laws and Regulations.

(Signed,) E. G. FANSHAWE,
Vice-Admiral.

ROYAL ALFRED, BERMUDA,
18th May, 1871.

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